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WILLIAM S. COHEN, MAINE
WARREN B. RUDMAN, NEW HAMPSHIRE
JOHN SEYMOUR, CALIFORNIA

LEONARD WEISS, STAFF DIRECTOR
FRANKLIN C. POLK, MINORITY STAFF DIRECTOR AND CHIEF COUNSEL

20 APR 1992

United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

April 14, 1992

The Honorable Robert M. Gates
Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Director Gates:

I am please to learn that you will be testifying before the Committee on Governmental Affairs on Tuesday, May 12, 1992. The hearing will begin at 9:00 a.m. and be held in Room 342 of the Dirksen Senate Building. The subject of the hearing will be the "Assassination Materials Disclosure Act of 1992." The legislation proposes to create an independent review board to govern and coordinate the release of government information relevant to the assassination of former President John F. Kennedy. As required by Commmittee rules, please have 100 copies of your written testimony delivered to the Committee by close of business, Friday, May 8, 1992. While your written testimony may be as long as you wish, please plan to limit your spoken testimony to five to seven minutes in length.

Your testimony will be extremely helpful to the Committee and to the Congress as it considers this important legislation. While you may discuss whatever aspects of the legislation you desire, particularly how it relates to the records and resources of your agency, the Committee would appreciate learning your views on several specific subjects:

What are the reasons which the Central Intelligence Agency has records related to the assassination of President Kennedy?

What have the methods been to date for the identification and definition of Central Intelligence Agency records as material related to the assassination of President Kennedy?

What steps has the Central Intelligence Agency made to assess the scope of relevant documents outside of materials requested by earlier investigative or other official committees or commissions, or through the Freedom of Information Act?

What is the volume of material which you might recommend be released to the public without concern for further postponement?

Would you be opposed to a provision requesting agencies, whenever possible, to self-certify materials which may released without agency objection?

What recommendations can you make with regard to the need for interagency working groups to identify third-agency records in agency files, to avoid duplication, and to assist in the efficient disclosure of information to the public?

What are the logistical, manpower, and resource concerns that you have with regard to the review and release of assassination material?

Thank you for your assistance and consideration. I look forward to seeing you on May 12th. In the event that you have any questions, please do not hesitate to contact me. Your staff has already been very helpful to the Committee in its preparation for the hearing. They may also contact Dr. Leonard Weiss, Staff Director, or Steven Katz, Counsel, at 202-224-4751.

Sincerely,

John Glenn

John Glenn
Chairman

JHG/sk

Central Intelligence Agency

Washington, D.C. 20505

OCA 1162-92
24 April 1992

Mr. Bernard H. Martin
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Martin:

This is in response to your request for the views of the Central Intelligence Agency on Senate Joint Resolution 282, the "Assassination Materials Disclosure Act of 1992", and the corresponding House Joint Resolution 454 ("the resolutions").

The Central Intelligence Agency fully supports the fundamental purpose underlying this legislation--that efforts should be made to declassify and make available to the public as expeditiously as possible government documents relating to the assassination of President Kennedy. In fact, the Director of Central Intelligence (DCI) has recently established and staffed a new unit within CIA responsible for review and declassification of documents of historical interest, including the JFK-related files, as part of the Agency's program of increased openness. Should Congress decide to enact a Joint Resolution, CIA will work closely with the appropriate body to ensure that the maximum amount of material possible is declassified consistent with the need to protect intelligence sources and methods. We anticipate that a signficant part of our doucuments can be declassfied for release pursuant to this process.

Although we are in agreement with the purpose of the resolutions, they contain several provisions that are of concern. We are prepared to work with the relevant Congressional committees to resolve these potential difficulties.

Our primary concern is that the resolutions provide that the initial review of all documents is vested in the Review Board and its staff. This approach is inconsistent

with the DCI's statutory duty to protect intelligence sources and methods. In fact, as currently drafted, the resolutions contain no provision requiring security clearances or secure document handling by the Assassination Materials Review Board or its Executive Director/staff elements. In order to minimize the exposure of sensitive intelligence sources and methods, CIA proposes that the initial review of assassination materials be made by the originating agencies. Documents that could not be released to the public would then be reviewed by appropriately cleared Board members or perhaps a small number of cleared staff.

Second, we are also concerned that the resolutions do not provide the Agency with opportunity to object to the release of CIA information contained in documents originated by Congress or the Warren Commission. Under the resolutions, documents originated by these entities can be released by the Executive Director of the Assassination Materials Review Board without any review by the President or other Executive Branch agencies. We believe that the resolutions should provide that the agencies that originated information have the opportunity also to review the information and raise necessary objections prior to its release.

Third, the resolutions define "assassination material" broadly to include any records that relate "in any manner or degree to the assassination." We believe this definition should be interpreted to include only documents already identified by CIA as assassination material, and any additional documents the Board requests that have some reasonable relationship to the JFK assassination.

Fourth, the resolutions provide only a 30 day period for appealing decisions by the Executive Director to release information. This may not provide sufficient time for meaningful review of what could prove to be large volumes of material at one time. The resolutions should be amended to provide that an agency may request a reasonable extension of time to determine whether documents may be released.

Fifth, the Board's broad powers to subpoena witnesses and documents and hold hearings under the resolutions could conflict with the DCI's statutory duty to protect sensitive intelligence sources and methods from unauthorized disclosure. We believe that the Board should be required to consult with the DCI on such issues if intelligence equities are involved.

Finally, section 6 of the resolutions, which outlines the grounds for postponement of public release of a

document, may not be adequate to protect Agency interests in certain respects. For example, there is no provision for postponing release of Executive privilege/deliberative process, attorney-client, or attorney work-product information. While such privileges are not likely to arise with respect to factual information directly related to the JFK assassination and could be waived in the public interest, they would be wholly unavailable under the resolutions in the rare case that they might be needed. We also believe that "intelligence agent" under section 6(1)(A) of the resolutions should be defined with reference to the Intelligence Identities Protection Act so as to protect the identity of covert employees of the Agency.

We appreciate the opportunity to comment on the assassination materials resolutions. Please contact Vicki Pepper of my staff at (703) 482-6126 with any questions or comments concerning the Agency's position on these resolutions.

Sincerely,

E. Page Moffett for

Stanley M. Moskowitz
Director of Congressional Affairs

Washington D C 20505

OCA 1134-92

6 MAY 1992

The Honorable John Glenn
Chairman
United States Senate
Committee on Government Affairs
Washington, D.C. 20510

Dear Mr. Chairman:

Director Gates has asked me to respond to your request for the views of the Central Intelligence Agency on S.J. Res. 282, "The Assassination Materials Disclosure Act of 1992." The Central Intelligence Agency fully supports the fundamental purpose underlying this legislation--that efforts should be made to declassify and make available to the public as expeditiously as possible government documents relating to the assassination of President Kennedy. In fact, the Director of Central Intelligence (DCI) has recently established and staffed a new unit within CIA responsible for review and declassification of documents of historical interest, including the JFK-related files, as part of the Agency's program of increased openness.

As you are aware, the DCI has agreed to appear before your Committee on 12 May to testify on the nature and extent of Agency records related to the assassination and to provide his views on the joint resolution. Our specific comments on the joint resolution will be contained in his prepared remarks, which will be provided to the Committee in advance of the hearing.

Please do not hesitate to have your staff contact us if you have any questions regarding our testimony on the joint resolution.

Sincerely,

/s/ Stanley M. Moskowitz

Stanley M. Moskowitz
Director of Congressional Affairs

Central Intelligence Agency

Washington, D.C. 20505

OCA 1123-92

7 MAY 1992

The Honorable John Conyers, Jr.
Chairman
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Director has asked me to respond to your letter of April 6, 1992 requesting certain information regarding CIA holdings of records related to the assassination of President Kennedy. We do have a significant number of records relating to the assassination of President John F. Kennedy, although many of these records were originated by the FBI or by investigating committees of the Congress. We believe that a significant portion of our records could be released if H.J. Resolution 454 were enacted into law.

I should also point out that the CIA is currently embarking on its own review of assassination records. I would expect that this review will result in the public release of a significant body of information.

To help the committee understand the nature and number of CIA records pertaining to the assassination, I am enclosing the answers to the specific questions you raised in your letter.

Sincerely,

/s/ Stanley M. Moskowitz

Stanley M. Moskowitz
Director of Congressional Affairs

Enclosure

1. Did the CIA retain possession of records requested by or developed on behalf of the House Select Committee on Assassinations? If so, how many pages of such records does the Agency have in its possession? What is the nature of these records?

Yes, the CIA retained possession of records requested by or developed on behalf of the House Select Committee on Assassinations (HSCA). The Agency has approximately 250,000 - 300,000 pages of such records which include microfilm of CIA's Oswald file (originally collected in response to the Warren Commission's inquiry, then added to) as well as records collected in response to specific requests from the HSCA. Although these records cover a wide variety of topics, they principally focus on CIA operations against Cuba and Castro, Lee Harvey Oswald's sojourn in the USSR, and Oswald's activities in Mexico City and New Orleans. The vast majority of documents pertaining to Oswald were created in response to specific inquiries from the Warren Commission and the HSCA. They also include a large number of name traces requested by the HSCA staff, as well as materials relating to the Garrison investigation, Cuban exile activities, FBI reports on Oswald, and even Watergate. Because the HSCA was also investigating the assassination of Dr. Martin Luther King, Jr., there is also some material on the Black Panthers and the civil rights movement.

2. Does the CIA have records outside of those related to the HSCA that may be considered relevant to the assassination of President Kennedy? If so, please describe such records and the approximate number of pages.

The records described above contain all CIA documents that previously have been considered relevant by the Warren Commission and the HSCA. CIA believes that, in response to these investigations, it has identified all documents that directly pertain to the assassination of President Kennedy.

3. Did any of the records described in questions 1 and 2 originate with the FBI? If so, approximately how many?

We believe that approximately 10 percent of the records described in questions 1 and 2 originated with the FBI.

4. Did any of these records originate with any other Federal, foreign, state, or local agency? If so, please describe which agencies and the approximate numbers.

A small number of CIA's records pertaining to the assassination of JFK, probably about 1 percent, originated with the State Department. About 20 percent of the records originate with a variety of other outside sources, including the Secret Service, the military services, press clippings, local police departments, etc.

5. How many of these records have been reviewed for release under the Freedom of Information Act(FOIA)? How many of these records have been released pursuant to such requests?

CIA has released 7,432 pages of records pertaining to the assassination of JFK, representing 1,969 documents, under the FOIA. There is no documentation of how many JFK assassination records CIA has reviewed under FOIA.

6. In the estimation of the CIA, approximately how many records would be released under the standards contained in House Joint Resolution 454?

We believe that a significant portion of our records related to the assassination of President Kennedy could be released if the Joint Resolution were enacted into law. We would review our holdings carefully to ensure that the maximum amount of information is released, consistent with the DCI's responsibility to protect intelligence sources and methods and with the privacy interests of the individuals involved.

U.S. Department o stice

Office of Legislative Affairs

Mark Evans

Office of the Assistant Attorney General

Washington, D.C. 20530

April 27, 1992

Honorable John Conyers
Chairman
Subcommittee on Legislation
and National Security
Committee on Government Operations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman

I am writing to express the views of the Department of Justice on H.J. Res. 454, the "Assassination Materials Disclosure Act of 1992" ("the resolution"). Although we are sympathetic to the concerns that prompted introduction of this legislation, and are prepared to make documents available to the public in a manner that preserves applicable privileges and addresses legitimate confidentiality interests, we believe that the disclosure requirements in the resolution raise several constitutional concerns. In addition, we believe that the structural provisions regarding the appointment and authorities of the Assassination Materials Review Board are constitutionally flawed. We also have a number of other objections to the specifics of the joint resolution, detailed below.

We are, of course, willing to work with the Congress in an effort to remedy our objections. Nevertheless, we strongly object to the resolution in its current form, and, if it were presented to the President without amendment, would give serious consideration to recommending presidential disapproval.

Constitutional Objections

The resolution's disclosure requirements for Executive Branch information would severely encroach upon the President's constitutional authority to protect confidential information. See generally Nixon v. Administrator of General Services, 433 U.S. 425, 446-455 (1977). Section 6 significantly limits the bases on which public disclosure of material could be postponed. Most seriously, unlike the Freedom of Information Act, this provision provides no basis at all for protecting law enforcement information or Executive Branch deliberations. See 5 U.S.C. § 552(b)(7) (FOIA law enforcement exemption), § 552(b)(5) (FOIA

exemption incorporating deliberative process privilege and other privileges recognized at common law).

In addition, although section 6 recognizes the Executive Branch's confidentiality interests in the national security and foreign relations area, it imposes unacceptably restrictive standards for protecting those interests. For example, the only intelligence sources and methods that can be protected are those that are "currently utilized, or reasonably expected to be utilized." The identification of past sources and methods could easily compromise current operations and other national security interests. Moreover, matters "relating to the military defense, intelligence operations or conduct of foreign relations" are also subject to a "currently relating" standard, and, even more significantly, they can be protected only if it is determined that the threat posed by disclosure "is of such gravity that it outweighs any public interest in its disclosure." Executive Order 12356, which is based on the President's constitutional authority to control the dissemination of national security information, does not call for a balancing of national security and other public interests.[1]

Section 8(h)(2) makes a concession to the President's existing, constitutional responsibility to protect confidential information by granting him authority to overrule the Review Board's decision to release material, but the section nonetheless raises substantial constitutional concerns by purporting to limit the President's authority to the standards set forth in section 6.[2] The President's constitutional authority to withhold confidential Executive Branch information cannot be so limited, because it extends to any material for which he determines withholding is in the public interest. Equally problematic from a constitutional standpoint is the requirement of section 8(i) that the President submit to Congress copies of any material that he determines to withhold pursuant to section 8(h)(2). The separation of powers requires that the President be able to

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[1] The problems that section 6's limitations would create would only be exacerbated by the presumption for release imposed by the "clear and convincing evidence" standard established in sections 7(d) and 8(b) for a decision to invoke the section 6 exemptions. In addition, permitting postponement of release only where the release "would" meet the criteria established in section 6 creates too high a standard to meet in protecting national security information, confidential sources and other interests recognized in section 6.

[2] See also Sec. 11 ("Where this Joint Resolution requires release of a record, it shall take precedence over any other law, judicial decision construing such law, or common law doctrine that would otherwise prohibit such release.").

withhold privileged information from the Congress as well as the public.[3]

Although no statute can override the President's authority to assert executive privilege with respect to specific documents or information, we believe that H.J. Res. 454's encroachment upon the President's authority in this area is so severe as to render it unconstitutional under existing Supreme Court precedent. In reviewing this kind of regulation of the Executive Branch, the Court has focused on the disruption to the Executive's exercise of its constitutional responsibilities: "[I]n determining whether the [resolution] disrupts the proper balance between the coordinate branches, the proper inquiry focuses on the extent to which it prevents the Executive Branch from accomplishing its constitutionally assigned functions." Nixon v. Administrator of General Services, 433 U.S. at 443. Where the potential for disruption of this balance exists, the legislation may be upheld only if it is "justified by an overriding need to promote objectives within the constitutional authority of Congress." Id.

We do not believe that the resolution's disclosure provisions are supported by the "overriding need" that would be necessary to find the legislation constitutional. Congress could readily enact legislation establishing a strong policy in favor of disclosure of this material without restricting the President's discretion. We note that the legislation at issue in Nixon v. Administrator of General Services was upheld only because "the Act facially [was] designed to ensure that the materials can be released only when release is not barred by some applicable privilege inherent in [the Executive Branch]." 433 U.S. at 444.

The structure of the Assassinations Materials Review Board also raises a number of difficult issues. Section 5(a) of the resolution would establish the Review Board "as an independent agency." Because it would be vested with the powers to review Executive Branch records and information and to authorize the release of those materials, the Review Board would have to be considered an executive agency for constitutional purposes. We would thus interpret section 5(a) as requiring the Review Board to be "independent" from all other Executive Branch departments and agencies, but nonetheless within the Executive Branch and subject to the direction and control of the President.

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[3] A related constitutional concern is raised by the requirement of section 5(i) that certain congressional committees be given "access to any records held or created by the Review Board." Since the Review Board would be an Executive Branch agency, see infra, the President must retain the authority to direct that privileged material be withheld from congressional committees.

Section 5(b) of the resolution provides that members of the Review Board would be appointed by the division of the United Stated Court of Appeals for the District of Columbia Circuit established under 28 U.S.C. § 49 (the Special Division), which also appoints independent counsels. Article II, sec. 2, cl. 2 of the United States Constitution provides that "the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments." (Emphasis added.) In Morrison v. Olson, 487 U.S. 654, 671 (1988), the Supreme Court stated that "the line between 'inferior' and 'principal' officers is one that is far from clear." The Court, nevertheless, concluded that the independent counsel was an inferior officer because she was subject to removal for cause by the Attorney General, was empowered to perform certain limited duties, and had limited jurisdiction and tenure. We have concluded that the members of the Board would be inferior officers under the Court's analysis in Morrison. The Board members are subject to removal for cause by the President or the Attorney General. See Sec. 5(h). The Board's duties are limited to reviewing certain materials and making determinations concerning public disclosure. The Board's jurisdiction is limited to documents related to various investigations of a particular crime. Finally, the Board's tenure is limited to, at most, three years. See Sec. 5(l).

Because the appointment of the Board members, who are executive officers, is vested in a court of law, the appointment is an "interbranch appointment," and Congress' power to provide for such appointments is not "unlimited." Morrison, 487 U.S. at 675. In addition to general separation of powers concerns, which we address below in discussing the "for cause" restriction on the removal of Board members, "Congress' decision to vest the appointment power in the courts would be improper if there was some 'incongruity' between the functions normally performed by the courts and the performance of their duty to appoint." Id. at 676 (quoting Ex parte Siebold, 100 U.S. 371, 398 (1880)). Morrison held that the appointment of the independent counsel by the Special Division was not an incongruous interbranch appointment, but it relied on precedents in which courts have appointed prosecutors and on the perceived conflict of interest where the Executive Branch is called upon to investigate its own high-ranking officers. Neither of these factors would help to justify the interbranch appointment for the members of the Review Board. Furthermore, the Morrison Court gave little guidance for determining, as a general matter, whether other interbranch appointments are incongruous. Given this uncertainty, it is not clear that vesting the appointment of the members of the Review Board with the Special Division is constitutional. We believe that the Review Board should not be created under this constitutional cloud and therefore recommend that the appointment of the Board members be vested in the President, by and with the

advice and consent of the Senate; the President alone; or the Attorney General. Any of these three options would be preferable over the interbranch appointment scheme currently contemplated.

Under section 5(h) of the resolution, a member of the Board may be removed "only for inefficiency, neglect of duty, malfeasance in office, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the member's duties," and the Attorney General must submit a report to the Congress and the Special Division stating the grounds for removal. Under Morrison, the validity of removal restrictions turns on whether "they impede the President's ability to perform his constitutional duty." Id. at 691. We do not believe that the restriction on removal of the Board members impedes the President's ability to perform his constitutional duty because the President would retain the power, under section 8(h), to overturn decisions of the Board with respect to whether assassination material is subject to release under the standards in the statute.[4]

The resolution also provides for the appointment of an Executive Director whose duties would include reviewing assassination materials in the first instance. Under section 7(e)(1) of the resolution, the Executive Director is vested with the power to authorize the disclosure of certain assassination materials in the absence of an appeal by the originating body. Because the Executive Director's determination under section 7(e)(1) would allow agencies to release records even where they would otherwise lack legal authority to release, he "exercise[s] significant authority pursuant to the laws of the United States" and is an officer of the United States. See Buckley v. Valeo, 424 U.S. 1, 126 (1976). The Executive Director therefore cannot be appointed by the Review Board because, under the appointments clause, only the President alone, the heads of departments or the courts of law, not inferior officers, may be vested with the power to appoint officers of the United States. To address this problem, we recommend that the Executive Director be appointed by the President alone.

Section 8(c) of the resolution confers on the Review Board the power to subpoena witnesses and documents and states that those subpoenas may be enforced in any appropriate federal court by the Department of the Justice "acting pursuant to a lawful request of the Review Board." Section 7(a) suggests, however,

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[4] We note, however, that we have independent constitutional objections to the provision of the resolution purporting to insulate the decisions of the Board concerning legislative materials from presidential direction. See infra. If that provision is not deleted as we suggest, it may undermine the validity of the removal restrictions.

that the Executive Director may recommend that the Review Board subpoena records from an executive agency if the agency denies the Executive Director access. Because it is a part of the unitary Executive Branch, the Review Board could not constitutionally issue a subpoena against another executive agency. Any attempt to enforce such a subpoena in federal court would not present a case or controversy within the meaning of Article III of the Constitution.[5] Thus a request by the Review Board, pursuant to section 8(c), to enforce a subpoena against an executive agency would not be a "lawful request" and the Department of Justice would not seek enforcement. Therefore the clause authorizing the Executive Director to recommend that the Review Board issue subpoenas for executive records should be deleted from section 7(a).

Section 8(h)(1) provides that decisions of the Review Board to release congressional records and Warren Commission records are not subject to review by the President. With respect to the Warren Commission, we note that the Warren Commission was clearly part of the Executive Branch for constitutional purposes: it was established pursuant to Executive Order; its members were appointed by the President; and its expenses were paid from funds appropriated to the President. See Exec. Order No. 11130. The Warren Commission should not be treated as a legislative entity. Furthermore, the provision in section 8(h)(1) prohibiting the President from reviewing the Board's decisions concerning congressional records is unconstitutional. The constitutional chain of command requires that the President have the power to supervise the actions of all Executive Branch officers. Congress may vest the power to review and release congressional assassination records with an officer of Congress, but it may not vest that power with an Executive Branch officer and deprive the President of his constitutional power to supervise that officer. For these reasons, we recommend deleting section 8(h)(1) and applying the appeal procedure in 8(h)(2) to all assassination materials.

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[5] The ruling of the Supreme Court in United States v. Nixon, 418 U.S. 683 (1974), does not undermine our conclusion on this point. Nixon was a suit between the United States, acting through the Special Prosecutor, and Richard Nixon, who had personal possession of the records subpoenaed by the Independent Counsel. In that setting, the Court held that the case presented "traditionally justiciable" issues and had the required "concrete adverseness" necessary for a case or controversy. Id. at 697 (citations omitted). In contrast, a subpoena issued for official executive branch records would not satisfy those conditions.

Other Objections

We believe that the definition of "assassination material" in section 3(2) is too broad. The definition should be narrowed so that it includes only that material which is germane to the assassination investigations and should not include, for example, material regarding all death threats made against President Kennedy during his presidency. Much of the over 300,000 pages of the non-core JFK assassination records provided to the House Select Committee on Assassinations involve FBI investigations of individuals and organizations unrelated to the assassination. The Committee requested such broad range of material to see if it supported any conspiracy theories. We are unaware that any of that material proved to be related to the assassination. To the extent it did not, the material should be outside the scope of the definition of "assassination material," and not subject to the provisions of the Joint Resolution.

The definition of "originating body" in section 3(7) is under-inclusive in that it does not address information that originated with one agency that is actually contained in the record of another agency. For example, if the FBI has in its FBI record information that originated with the CIA, the CIA should be considered the originating body of that information. The definition should be changed to read:

> (7) "Originating Body" means the Executive agency, commission, or congressional committee that created the particular record or created the particular information in the record or obtained the particular record . . . .

In section 6(3), the word "witness" should be deleted and the word "person" substituted in its place. This amendment will ensure that all individuals needing confidentiality are protected. Also in section 6(3), the words "substantial and unjustified" should be deleted and the words "express or implied" should be added before the word "understanding." Law enforcement agencies generally consider any breach of the confidentiality they afford their sources to be "substantial and unjustified." Thus, if there was an express or implied understanding of confidentiality related to the Government's obtaining information, that confidentiality should be protected (absent certain recognized exceptions, such as waivers). But even if some modification to the protections afforded confidential information is acceptable, the proposed standard in section 6(3) dilutes the protections far too much.

The standard in section 6(4) is too narrow. The standard would protect only "security or protective procedures" used by agencies responsible for protecting government officials and would not even protect those procedures where the harm caused by the release is not deemed to be not "so harmful" that it outweighs the public interest in disclosure. We recommend section 6(4) be amended as follows to provide better protection for all non-public law enforcement methods:

> (4) disclose a technique or procedure that is utilized, or that may reasonably be expected to be utilized, by any law enforcement agency, and that is not well known to the public.

Similarly, we also recommend the addition of a provision in section 6 to protect against endangering the life or physical safety of any individual. This is similar to protections extended under 5 U.S.C. 552(b)(7).

We strongly object to the provision in section 8(h)(2) that prohibits the President from delegating the powers conferred in that section. As head of the Executive Branch, the President must have the authority to delegate functions where, in his judgment, such delegation would improve the efficient operation of the Executive Branch. Congress should not by law limit this necessary and important presidential power.

Finally, we also strongly object to the provision in section 10(a) of the bill that would authorize the Review Board, through its own counsel, to petition a court for release of information relevant to the assassination. The Attorney General has plenary authority to conduct and to supervise all litigation in which the United States, its agencies, or its officers are interested or to which they are parties. 28 U.S.C. §§ 509, 510, 515(a), 516, 517, 518(b) and 519; 5 U.S.C. § 3106.

As you may know, it is a longstanding policy of the Executive Branch that the authority to litigate and attend to the interests of the United States in judicial proceedings should be centralized in the Attorney General. In that connection, we have, on numerous occasions in the past, cautioned that we would recommend executive disapproval of legislation containing provisions authorizing other officials to litigate. We strongly oppose any proposed statute, such as this one, that would detract from the Attorney General's centralized litigation authority.

We look forward to working with you on this important matter. In this regard, please be advised that we are developing an alternative draft resolution to address these and other concerns. We plan to provide our proposal to the Subcommittee in the near future.

The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report, and that enactment of H.J.Res. 454 in its current form would not be consistent with the objectives of the Administration.

Sincerely,

W. Lee Rawls
Assistant Attorney General

cc: The Honorable Frank Horton
Ranking Minority Member

OCA 2034-92
1 May 1992

MEMORANDUM FOR THE RECORD

SUBJECT: House Government Operations Committee Hearing on H.J. Res. 454 (JFK Materials Resolution)

1. On 28 April, the undersigned attended a public hearing on the proposed Assassination Materials Disclosure Act conducted by the House Government Operations Legislation and National Security Subcommittee. Majority Committee/Subcommittee Chairman Conyers and Ranking Minority Member Horton were present for the entire hearing; majority Subcommittee members English, Neal, Peterson, and Thornton and minority members Shays and Schiff and full Committee member Martinez attended at least part of the hearing. The Committee's Press release, which criticizes the government and particularly CIA as releasing JFK-related documents "at a snail's pace", and witness statements are attached.

2. The hearing was well attended by the public and attracted much media coverage. Eight witnesses testified in four groups: Congressmen Louis Stokes (assisted by Robert Blakey, former counsel to the House Select Committee on Assassinations) and former HPSCI Chairman Lee Hamilton testified first. The congressmen were followed by the movie "JFK"'s director Oliver Stone, who was followed by Howard Willens, Counsel to the Warren Commission, and James Johnston, Counsel to the Church Committee. The session closed with a panel comprised of Ms. Leslie Harris, Chief Legislative Counsel for the Washington office of the ACLU; Dr. Herbert Parmet, Professor of History, Queensborough Community College and Graduate School of the City University of New York, and Dr. Harold Rellyea, American National Government Specialist at the Congressional Research Service.

3. Chairman Conyers advised in his opening remarks that the Committee wanted to hear from the Executive branch and thus would hold another hearing session. He noted that "after much negotiation," the Director of Central Intelligence would be testifying in mid-May. He further noted that the Committee also hoped to hear from the Attorney General, but negotiations with the Justice Department were still ongoing. Conyers was critical of the DoJ at the outset, noting that the Committee had

Subject: House Government Operations Committee Hearing on H.J. Res. 454 (JFK Materials Resolution)

received a long, single-spaced letter from Justice detailing numerous "legalistic" objections to the resolution, which he characterized as not reflecting a real willingness to work together to release the documents to the American people.

4. The general tone of the session was strongly in favor of the resolution and disclosure of the vast majority of the material. Most witnesses conceded that there might be some materials that required postponement of disclosure, but the bias was clearly toward disclosure. Even Oliver Stone, in response to a comment from Congressman Shays that he (Shays) found it hard to imagine what national security or privacy issues would persist after 30 years, conceded that there might be some exceptions, but Stone thought 98 percent of the material could be released. Several witnesses, including Congressman Stokes and Church Committee counsel, suggested that most national security information should be released under the resolution, but that privacy interests posed greater concerns. Congressman Hamilton warned that the Congress should be careful that nondisclosure "loopholes" do not "swallow up the bill," which is why he said that review by an independent board was so important.

5. Stone's testimony had quite an impact on the hearing. Several congressman and witnesses credited his movie "JFK" as "the reason we are all here today." Chairman Conyers appeared particularly impressed with Stone, describing his testimony in exchanges with later witnesses as "persuasive" and "compelling." A few potentially tough questions were thrown at Stone--did he not over-lionize Garrison; how much research did he do for the movie and did he seek to talk to or obtain information from the government as part of his research process? However, there was no aggressive follow-up to Stone's answers. Discerning observers may have picked up on the fact that Stone's "research" seemed tailored to and limited by pre-conceived conspiracy theories. (For example, when asked if he had talked to President Ford, a member of the Warren Commission and advocate of disclosure of the JFK documents, Stone answered no--that it was pretty obvious where Ford stood as a proponent of the lone gunman theory.)

6. When asked about his personal views, Stone said he believed that there were two conspiracies. The murder conspiracy was small and covert--perhaps involving no more that five to ten people--and was led by the "intelligence agencies." Stone did not mention CIA by name at this point.

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He mentioned Oswald's alleged ties to naval intelligence, and also said that a closer look should be taken at an operation "MONGOOSE" and a Colonel Landsdale. He also posited a bigger "cover-up" conspiracy after the fact, spearheaded by President Johnson (who Stone alleged told Earl Warren he would be responsible for World War III if the Commission tied the Cubans into a conspiracy). Stone theorized that a much broader "Establishment", while not directly involved in the assassination, was not sorry to see Kennedy go because he was an agent of profound change embarking upon several courses that disturbed that "Establishment", including pulling out of Vietnam. In response to a later question about various theories, Stone called the Mafia theory a "red-herring." Stone said "as you know, the CIA has always used the Mafia for plausible deniability" and that it was important to look behind the Mafia at "who pulls the strings."

7. Other matters of Agency interest discussed include that both the Warren Commission attorney and particularly the Church Committee attorney castigated CIA for "lying" to the Warren Commission. The particular example offered had to do with "AMLASH." This individual came up in connection with traces the Agency apparently conducted for the Warren Commission. CIA purportedly had a relationship with AMLASH in connection with a Castro assassination plot, but did not make this fact known to the Warren Commission. The witnesses characterized this as pertinent information CIA consciously withheld from the Warren Commission. Also, when the final panel engaged in a broader discussion of government disclosure and FOIA with the subcommittee, the ACLU held up the CIA Openness Task Force report as an example of why FOIA was a "dismal failure" as the mechanism to "vindicate t public's right to know." (On 18 March Conyers rigorously questioned Gary Foster on the task force report when his subcommittee held a hearing on "Government Secrecy After the Cold War.")

8. A major recurring theme was concern that, despite the need to make the documents publicly available, the Administration would not support the resolution and it could be vetoed. Congressman Hamilton stated that, if the resolution were vetoed, he hoped that at minimum the House would pass a resolution to release its own records. (Such an action would be problematic for the Administration, because much Executive branch information is contained in House records, and the House also probably considers documents obtained from Executive agencies as part of its

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records.) Most witnesses thought the Congress should try to avoid a constitutional confrontation with the Administration, however, and a few practical suggestions to help work around problems were made. For example, the ACLU suggested that the Review Board might be modeled after the Advisory Committee established in connection with the State Department's preparation of the Foreign Relations of the United States (FRUS) series, with which CIA's historical staff is familiar. This body was established by a provision included in last year's Foreign Relations Authorization Act.

9. In conclusion, the hearing did not get into much detail on provisions of the resolution. Much time was spent on general propositions like the fact that the documents ought to be released and why, and matters tangential to core issues raised by H.R. 454.

Victoria L. Pepper
Assistant General Counsel
Office of Congressional Affairs

OTE 92-1403
10 February 1992

MEMORANDUM FOR: Director of Central Intelligence

VIA: Director of Training and Education
Director, Center for the Study of Intelligence

FROM: J. Kenneth McDonald
Chief, CIA History Staff

SUBJECT: Survey of CIA's Records from House Select Committee on Assassinations Investigation

1. As you requested on 16 January, the History Staff has now surveyed CIA's records from the House Select Committee on Assassinations (HSCA) investigation into the assassination of President John F. Kennedy. As promised in my 30 January interim report, I can now give you a full account of our findings, and of my recommendation for transferring this HSCA collection at its existing classification to the National Archives through CIA's Historical Review Program.

2. After the Office of Congressional Affairs arranged permission from Congress for History Staff access to the sequestered 64 boxes of this collection, we examined these and other related holdings at Headquarters and the Warrenton Records Center. As a result of careful, persistent, and determined inquiries, we are fairly confident--although by no means certain--that we have seen all the documents that CIA collected for the HSCA investigation of 1977-1979. The summary of our findings which follows is documented in more detail in attachments A and B.

3. General Description: The HSCA collection (defined as all records that the CIA provided to that Committee for its 1977-1979 investigation) is a large and chaotic collection. Beyond the 64 boxes sequestered by Congress that have been involved in FOIA litigation, there are 16 boxes of Oswald's 201 file and numerous loose folders (mainly from Mexico City Station records) that were collected for the Warren Commission investigation. Most of this material can be found on microfilm in the sequestered collection. Of the 64 boxes, 34 have material collected by the Directorate of Operations, while

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29 contain records from the Office of Legislative Counsel (now OCA), Inspector General, Office of the General Counsel, Directorate of Science and Technology, Office of Security, as well as several boxes of HSCA staff notes and records. Box No. 64 contains 72 microfilm reels (each equivalent to a box of records), which include the Oswald 201 file and Mexico City Station records, as well as other 201 files and information about Cuban exile groups.

4. Organization: The collection is arranged haphazardly, having been gathered in response to a series of HSCA and (in the case of the Oswald 201 file) Warren Commission requests. Although portions of the collection are organized by a variety of systems, there is no overall intellectual control of the entire body of records. We found fifteen indexes to the collection, none of which is adequate for control or retrieval.

5. Sensitivity: Although the collection is almost entirely at SECRET or lower classification, there is a scattering of TOP SECRET and codeword documentation. Materials we consider especially sensitive--more for privacy than national security reasons--include 201 files, phone taps, mail intercepts, security files, photo surveillance, names of sources, watch lists, and MHCHAOS documentation. Such material occurs throughout the collection, usually in response to HSCA requests for name traces. There are 22 microfilm reels of 201 files in addition to the Oswald file, while eight boxes contain security records, including, for example, files on David Atlee Phillips, Martin Luther King, and Clay Shaw.

6. Non-CIA Material: The collection includes a lot of third-agency material, mostly from the FBI. FBI reports dominate the 16 boxes of Oswald's 201 file, and nearly half of the 34 boxes of DO-collected material consists of third-agency material. The collection's remaining 29 boxes contain mostly CIA records, as does the box of microfilm, except for Oswald's 201 file. There is also some documentation of foreign liaison, mainly with the Mexican government.

7. CIA Complicity? Our survey found nothing in these records that indicates any CIA role in the Kennedy assassination or assassination conspiracy (if there was one), or any CIA involvement with Oswald. These records do reveal, however, that Clay Shaw was a highly paid CIA contract source until 1956. While nothing surfaced on Carlos Marcello in the collection, we found substantial documentation on other members of the mob, including Santos Trafficante.

8. Although the results of our survey fully support my earlier recommendation against inviting a panel of historians

into CIA to examine and report on this collection, the problem that this proposal addressed remains--the widespread allegations, given new impetus by Oliver Stone's "JFK," that CIA was part of a conspiracy to assassinate President Kennedy. That CIA has a closed collection of records concerning the Kennedy assassination is well known, both because it is part of over 800 cubic feet of HSCA investigation records that Congress has closed until 2029, and because our 64 boxes of these records have been the subject of FOIA requests, litigation, and court orders. Since opening all US Government records on the Kennedy assassination has been proposed by former President Ford, Congressman Louis Stokes, and others, many observers will consider your decision on this question a test of your new openness policy.

9. Options: CIA's three principal options are to keep the Agency's HSCA records closed and in our hands, to open them entirely, or to transfer them to the National Archives. Before making my case for the third option, I should note the following considerations with respect to the first two:

a. Closed: To maintain the status quo would keep the collection classified, closed and in CIA's hands, sequestered by Congress until 2029. CIA would, however, remain subject to the 1988 court order to review portions of it in response to FOIA litigation. While putting the collection into Historical Review Program processing would speed and broaden its declassification review (which would nevertheless take several years), such an internal shift would probably not change the public perception of our closed position. Although keeping these records closed remains a viable option, it tends both to encourage suspicion that CIA is part of a cover-up, and to undermine the credibility of CIA's openness policy. If Congress should decide to open all HSCA records, however, CIA would be hard put to keep its HSCA collection closed.

b. Opened: To open the HSCA collection would require the permission of Congress. Indeed, CIA would presumably not consider this option except in response to congressional action or pressure, or in order not to be the last hold-out in a Government-wide opening of Kennedy assassination records. While opening the collection would disclose a good deal of information that deserves continued protection for privacy or national security reasons, a total release would dramatically demonstrate CIA's new openness, and rapidly reveal that these records contain nothing pointing to a CIA role in the Kennedy assassination.

10. Recommendation: I recommend that CIA transfer its entire HSCA collection (as defined and identified in this report) at its existing classification to the National Archives and Records Administration (NARA), for continuing declassification review by Archives staff, in accordance with the relevant laws, regulations and CIA guidelines. This transfer should be carried out under the auspices of CIA's Historical Review Program. To retire this HSCA collection to the National Archives offers some significant advantages:

a. It would get the collection off our hands. Retiring the records to the National Archives, which is by law the eventual repository for all permanent US Government records, should reduce public suspicion of a CIA cover-up. Such a transfer would not set a new precedent, since CIA has previously retired over 4000 cubic feet of Office of Strategic Services operational records to NARA, as well as all CIA records so far declassified under the Agency's Historical Review Program. Although CIA has not previously transferred classified records to NARA, the transfer of this HSCA collection, resulting from a congressional investigation, follows the special precedent of the classified CIA documents retired to NARA's vaults as part of the records of the Watergate and Iran-Contra investigations.

b. Transferring these HSCA records to the National Archives will protect their existing classification. The Departments of State and Defense have routinely retired classified records to NARA for years. In accordance with statutory guidelines, NARA must ensure the confidentiality of investigatory sources and the proper protection of personal privacy and national security information, including intelligence sources and methods. NARA would continue the court-ordered declassification review according to CIA guidelines. CIA can accelerate the declassification of this collection by funding review positions at NARA, as the Department of State and other agencies have done in the past. (Attachment C outlines declassification procedures for classified records retired to the National Archives.)

c. NARA's professional archivists will bring this collection under control (as they have done with the 4000 cubic feet of disorganized OSS records that CIA has retired since 1984), so that it can be usefully researched as it is declassified. Moreover, many of the records in this collection (especially photographs, carbon flimsies, and Thermofax) need expert preservation, which NARA is organized to provide.

d. If Congress should eventually undertake to open this entire collection without regard to classification, the National Archives will be in a stronger position to protect its national security and privacy information than the CIA, whose motives would appear self-serving, if not sinister.

11. Action: If you wish to retire the Agency's House Select Committee on Assassinations collection to the National Archives, the following actions (from the offices noted) will be needed:

a. Request permission from Congress. (Office of Congressional Affairs)

b. Transfer responsibility for court-ordered FOIA declassification review from CIA to the National Archives. (Office of the General Counsel, with Information Management Staff, DO)

c. Prepare CIA guidelines for NARA's declassification review. (Office of Information Technology, DA)

d. Prepare the appropriate Historical Review Program documentation and NARA forms, and deliver the records. (Office of Information Technology, DA)

e. Announce the transfer jointly with Dr. Don Wilson, Archivist of the United States, and Congressman Louis Stokes. (Public Affairs Office)

/s/ J. Kenneth McDonald

J. Kenneth McDonald

Attachments

SUMMARY
CIA HISTORY STAFF SURVEY
House Select Committee on Assassinations Collection

10 February 1992

The House Select Committee on Assassinations (HSCA) Collection consists of the following parts, which the attached box list describes in further detail:

1. Sequestered HSCA Records The first and major part of the collection, 64 boxes of records under Job No. 80-T01357A, is wide-ranging material collected in response to House Select Committee on Assassinations requests for documents relating to the assassinations of President John F. Kennedy and, to a far lesser extent, Dr. Martin Luther King. Coordinated by the Office of Legislative Counsel (now the Office of Congressional Affairs) and now under OCA control, these are the "sequestered" boxes that have been the subject of FOIA litigation and court order.

a. Boxes 1-34: DO Boxes 1-34 (34 cu. ft. of records) are about one-half DO-collected materials, with the remainder largely of third-agency documents, primarily FBI reports gathered for the Warren Commission. There is also some material from the Department of State and the Immigration and Naturalization Service, as well as the original HSCA requests. Also included are staff handwritten notes, photographs, and copies of newspaper clippings. These records cover a wide variety of topics but focus on CIA operations against Cuba and Castro, Lee Harvey Oswald's sojourn in the USSR, Oswald's activities in Mexico City and New Orleans, and a large number of name traces requested by the HSCA staff. There is also material on the Black Panthers, the civil rights movement, and the peace movement. Among the subjects that appear in these boxes are: Jack Ruby, Clay Shaw, Frank Sturgis, E. Howard Hunt, Nosenko, Guy Bannister, David Ferrie, Silvia Duran, Martin Luther King, Coretta Scott King, James Earl Ray, William Kunstler, Jim Garrison, G. P. Hemming, Marina Oswald, John Roselli, Sam Giancana, Santos Trafficante, and Rolando Cubela's AMLASH operations against Castro. These records also include the 1967 Inspector General's report on CIA plots against Castro and the testimony of Richard Helms in executive session before HSCA.

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b. Boxes 35-63 Boxes 35 through 63 in this job (29 cu. Ft. of records) are equally eclectic, divided as they are between records from the Office of Legislative Counsel (now OCA), Inspector General, Office of the General Counsel, Directorate, of Science and Technology, Office of Security (security files), and the HSCA itself. These records, which are mostly CIA material (heavily DO), consist of reports, memoranda, transcripts, cables, letters, newspaper clippings, photographs, and charts. They include materials relating to the Garrison investigation, Watergate, Cuban exile activities, and CIA attempts to assassinate Fidel Castro. There is also some material relating to Martin Luther King, black power, and racial violence, as well as a DS&T report on photos of the "unknown man" at the Mexico City Soviet embassy, and an NPIC analysis of the Zapruder film.

c. Box 64: Microfilm Box 64 of Job. No. 80-T01357A contains 72 reels of microfilm (although the box is labeled "CIA/DDO HSCA Records, box 1 of 2," box 2 has not been found). The History Staff was assured, however, that this was indeed box 64 of Job No. 80-T01357A. In addition to a copy of Oswald's 201 file (as actually shown to the HSCA staff in 1978), the microfilm contains material on Oswald's activities in Mexico City (primarily photographic and phone tap surveillance of the Soviet and Cuban embassies and consulates), Mexico City Station files (including cable traffic and the station's "P" Personality files), CIA security files, Nosenko interrogation transcripts, and a great deal of information relating to Cuban exile groups. There are also 22 reels of 201 files, which contain 151 individual files. Some of the material on these microfilm reels reproduces DO material in the boxes, although it is difficult to judge exactly how much.

2. Oswald's 201 File The second part of the HSCA collection is Lee Harvey Oswald's 201 file, 16 boxes (16 cu. ft. of records) held in the DO's Information Management Staff (IMS). This file consists primarily of copies of FBI reports relating to Oswald, FBI investigations on Oswald and his activities (including items that FBI sent CIA prior to the assassination), interviews with Marina Oswald, Department of State cable traffic concerning Oswald's passport and visa applications, information tracing Oswald's weapons, material on Jack Ruby and Silvia Duran, and a tape of Oswald's August 1963 radio debate. There are also detailed FBI reports concerning Oswald's assassination of the President and his contacts with Soviet officials, as well as records relating to Gilberto Alvarado, who maintained that he witnessed Cubans passing Oswald cash at a party on the night before the assassination.

3. Loose Files The HSCA collection's third part comprises a number of loose folders that evidently belong within the collection, including eight bulky Mexico City Station files (including cable traffic and "P" files) that are also in the microfilm. These files are considered to be part of the Oswald 201 file and are held in IMS. A group of 16 file folders that appear to be unaccessioned contain a miscellany of HSCA requests and Agency responses on subjects such as Oswald in the USSR, Marina Oswald, Roselli, and Giancana. These appear to belong with Job. No. 80-T01357A.

4. Organization Partly because of the collection's origins in the disorderly process of the Agency's response to massive investigatory committee requests, the collection is badly organized. Moreover, years of working through these files in response to numerous Freedom of Information Act requests have disrupted the collection further. More importantly, however, the Agency has not taken intellectual control of the collection in the fifteen years since it was created. Partial systems of organization have been imposed upon various parts of the collection without reference to or use of sound archival principles and procedures. Although 15 separate (and unsatisfactory) indexes to the collection eventually surfaced, the lack of any central index or finding aid makes retrieval of individual documents extremely difficult. Although CIA review officers attempted to impose some order to the collection by numbering each document and adding a folder numbering system to each box, there is no central control or finding aid for any of these these systems. Provenance cannot be traced, and entire files are missing that cannot be satisfactorily accounted for.

5. Non-record Copies This collection consists for the most part of xeroxed copies rather than original documents. We suspect that the originals of many, if not most, of these xeroxed documents would be difficult if not impossible to locate.

6. Preservation Much of the material throughout the collection, especially thermofax copies and photos, is fragile and in poor physical condition, requiring immediate attention to prevent further deterioration.

BOX LIST OF FILES REVIEWED
CIA HISTORY STAFF SURVEY
House Select Committee on Assassinations Collection

10 February 1992

Job No. 80-T01357A

Box 1: CIA Security files on numerous individuals, including G. P. Hemming, Martin Luther King, Marina Oswald, and others; 1967 CIA IG report on plotting against Castro; Garrison investigation. (File folders 6, 7, 17 and 20 are missing).

Box 2: CIA Security files on William D. Pawley, Frank Sturgis, Jack Ruby, Clay Shaw, and others; numerous FBI documents and assorted CIA material.

Box 3: Helms hearing testimony; Mexico City Station cable traffic; CIA, FBI, Warren Commission, and HSCA correspondence.

Box 4: Chronology of Lee Harvey Oswald's sojourn in the USSR: CIA operations against Cuba, Castro, and the Cuban Intelligence Service, including information relating to ZRRIFLE, AMLASH, AMMUG; description of CIA 201 system; information on Nosenko interrogation regarding Oswald and his Soviet connections. (File folder 8 is missing).

Box 5: Notes on Oswald; various HSCA notes and affidavits; transcripts of Helms's testimony; FOIA information.

Box 6: Information relating to Lee Harvey Oswald's activities in Mexico City, including surveillance from CIA projects LIEMPTY, LILYRIC, and LIMITED: Garrison investigation; CIA support to Warren Commission; AMMUG debriefing; copies of Mexico City Station despatches (HMMA); sensitive material on photocoverage of Soviet, Cuban, Czech, and Polish embassies in Mexico City; an index to HSCA papers held by CIA; an index of Warren Commission exhibits; information relating to Silvia Duran; a copy of an agreement between the Director and Chairman Louis Stokes requiring the CIA to retain for 30 years all materials gathered in response to Committee requests; Richard Helms executive session testimony in 1978 before the committee; an index to requests to the CIA from J. Lee Rankin of the Warren Commission.

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Box 7: Mexico City Station surveillance of Cuban, Soviet embassies; AMMUG; Silvia Duran; Oswald's activities in New Orleans (FBI report); monthly operations reports from Mexico City Station; summaries of HMMA cables; Cuban exile mug books; Gilberto Alvarado, the Nicaraguan who claimed he saw Lee Harvey Oswald receive cash in meeting inside Mexico City Cuban embassy; transcripts of phone calls to and from Soviet embassy; a machine listing of documents officially recorded as being in Oswald's 201 file (list missing from folder); Warren Commission trip to Mexico City and interview with U.S. Ambassador Thomas Mann; Jack Ruby; Fair Play for Cuba Committee; FBI reports on Oswald; HTLINGUAL documents; Nosenko interviews; and interview of Mexico City Station personnel by committee staff. (File folder 37 is missing).

Box 8: HSCA requests primarily for name traces involving individuals, including James Earl Ray, Clay Shaw, John Roselli, Sam Giancana, Santos Trafficante; 1977 CIA study on Church committee findings relating to the CIA; HSCA requests to interview CIA personnel; ZRRIFLE; information relating to the Cuban airline flight from Mexico City to Havana; Nosenko interviews; photos of anti-Castro individuals.

Box 9: Primarily HSCA requests for name traces on individuals and organizations; CIA surveillance operations in Mexico City; copies of cable traffic from Mexico City Station. (File folder 76 missing).

Box 10: Name traces from 201 files, HTLINGUAL mail intercepts, and MHCHAOS files, including individuals associated with Black Panthers, Students for a Democratic Society, the civil rights movement, Ramparts, and the peace movement. Material on Henry Winston, Maurice Halperin, George Edward Wright, Julian Bond, William Kunstler, James Earl Ray. Also Lee Harvey Oswald and Jim Garrison.

Box 11: Misc. items on JFK assassination; HSCA material, including personal history of Nosenko and Oswald chronology.

Box 12: HSCA chronologies 1976-78; draft reviews and CIA comments; Oswald dossier forwarded to Warren Commission; Garrison investigation of JFK assassination; CIA chronology of memos received from Warren Commission; HSCA chronology, January-March 1978.

Box 13: Alphabetical files of individuals marked "completed" or "pending" based on 201 files.

Box 14: Primarily HSCA requests for name traces on individuals and organizations; some 201 files; interviews with POWs from Bay of Pigs; FBI and Immigration and Naturalization Service reports on Oswald.

Box 15: Alphabetical files based on CIA, State, and FBI on numerous individuals including Claire Booth Luce, Clay Shaw, Martin Luther King, and Coretta Scott King.

Box 16: Copies of 201 files; interview and transcripts relating to Mexico City activities of Oswald and the Mafia.

Box 17: JMWAVE cable; DCI cable traffic.

Box 18: HSCA chronology; Oswald 201 file; report on CIA performance.

Box 19: HSCA staff notes, taken at CIA. (File folders 2-5, 14, 18, 25, 28 and 34-35 missing. With HSCA records?)

Box 20: Follow-up requests from HSCA on name traces; handwritten notes of committee staff members on CIA 201 files; CIA surveillance of Soviet embassy in Mexico City; Oswald's activities in Mexico City; copies of staff interviews with CIA personnel (file folders 58-62, 65, 69-70, 73-74, 80, 83, 85-86, 88-92, 96, 101, 103 and 112 are missing, while folder 57 is empty. With HSCA records?)

Box 21: HSCA requests by JFK file number.

Box 22: HSCA staff notes, misc.

Box 23: HSCA staff notes: misc., including Helms's testimony in executive session.

Box 24: HSCA staff notes: misc., including Mexico City interviews and speculation about a dual CIA filing system re Oswald and Oswald's relationship to Agency.

Box 25: Committee staff notes on materials reviewed at CIA relating to Oswald and his possible connections with the CIA and his activities in Mexico City; a sanitized copy of the 1977 CIA report on the Church Committee findings; information relating to Cuban embassy officials in Mexico City, including Silvia Duran, Eusebio Lopez, and Alfredo Diaz.

Box 26: Documents re Oswald's Mexico City visit; DCI's appearance before Warren Commission; allegations of Oswald's connection with CIA.

Box 27: Agency file on Oswald, as sent to Warren Commission; Nosenko interrogation notes.

Box 28: HSCA files mixed in with FBI and CIA documents; investigation of Silvia Duran, 28 November 1963; numerous HSCA handwritten notes.

Box 29: Alphabetical file on individuals from various sources, including Guy Bannister, Clay Shaw, and David Ferrie.

Box 30: HSCA report on Cuba trip, 1978; handwritten notes on Oswald; Domestic Contact Division notes on Garrison investigation; and information on Nosenko.

Box 31: Administrative materials, correspondence between HSCA and CIA, index and file of HSCA material returned to DO.

BOx 32: Mexico City Station cables and dispatches.

Box 33: Cuban Mugbook and Mexico City Station traffic, October 1963-January 1964.

Box 34: HSCA files on George de Mohrenschildt; Cuban Mugbook; HSCA reading file; CIA relations with FBI and Warren Commission; Nosenko on Oswald; and Ruby's alleged travel to Cuba.

Box 35: Review of HSCA trip to Cuba and Mexico; HSCA report on Silvia Odio; report, "CIA Operations against Cuba prior to the Assassination of President John F. Kennedy on 23 November 1963;" and Senate Select Committee reports and comments.

Box 36: Review, what could Castro have known?; review of HSCA draft report; IG report on Cuban operations for 1960-64, for any bearing upon JFK assassination; Book V of Church Committee final report, with review by Agency of provocation theory (charges of Agency cover-up of Cuban operations); E. Howard Hunt file; Mexico City/Havana flights; Win Scott; AMTRUNK; Oswald contacts with Soviet and Cuban embassies, Mexico City; CIA relations with FBI and Warren Commission; Alpha 66; photo of unidentified man, Mexico City; cable traffic, AMLASH, AMWHIP; Mafia plotting; Jack Ruby/Cuba; QJWIN, ZRRIFLE.

Box 37; Information relating to Cuban exile activities against Castro, such as the Torriente Group and Alpha 66; name trace on E. Howard Hunt; and information relating to the Garrison investigation.

Box 38: Alphabetical files, including Hemming, Luce, Sturgis, Roselli, James McCord, and Nosenko; file on U-2 overflights from Japan; DDS&T report on photos of unknown man.

Box 39: Photo comparisons of E. Howard Hunt and Frank Sturgis with tramps arrested in Dallas on day of JFK assassination; chart of frames from the Zapruder film showing the actual assassination.

Box 40: Security files (including record of those files inadvertantly destroyed).

Box 41: Security files (alphabetical), including Lucien Conein; also material on Fair Play for Cuba Committee.

Box 42: Name traces from Office of Security files; Garrison investigation information; a copy of a manuscript, "The Kennedy Conspiracy: An Uncommissioned Report on the Jim Garrison Investigation;" copies of material relating to Oswald shown to committee staff at CIA.

Box 43: Security files (some missing, inadvertantly destroyed). Files present include that of Martin Luther King.

Box 44: Security files.

Box 45: Security files, including those of David Atlee Phillips and Clay Shaw.

Box 46: HSCA requests for information relating to Frank Sturgis, Clay Shaw, and Watergate; information relating to JMWAVE and the Miami Station; FBI reports on left-wing and racial unrest in U.S.

Box 47: Security files, mostly newspaper clippings; list of notes by HSCA staff member; Oswald security materal; newspaper articles on Oswald; unsanitized material released in sanitized form via FOIA from Oswald material.

Box 48: Security files, including Tokyo Position Control Register (1960-64); HSCA staff notes reviewed by OS; HSCA staff review at headquarters of selected OS files (including Roselli and Giancana), plus other name traces through OS, including Gerald P. Hemming.

Box 49: Name trace requests; transcripts of interviews of CIA personnel; executive session transcript of a Senate Armed Services Committee meeting, 21 November 1973, regarding CIA assassination plots; CIA plans to assassinate Castro; and the Mafia/CIA connection in attempts to assassinate Castro.

Box 50: HSCA requests by date; Oswald chronology; draft copy of Hornbeck Report.

Box 51: Numerous HSCA requests and individual files; Jack Ruby file as well as Hemming, Hall, Pawley, M. L. King, and others.

Box 52: HSCA reviews by date; Cuban Counter-revolutionary Handbook, 1962 & 1964; photos of unkown man; NPIC analysis of Zapruder film, and Hoch memorandum.

Box 53: HSCA request log and priority response list; copy of manuscript, "Castro's Red Hot Hell": information relating to HSCA leaks, guidelines, procedures, clearances, and secrecy agreements.

Box 54: HSCA staff notes.

Box 55: HSCA staff notes; HSCA chronologies, 1953-77.

Box 56: FBI reports on racial violence in the U.S. in 1967 and the Black Power movement and Martin Luther King; deposition material, but not the actual depositions, of Ray Rocca, John McCone, Richard Helms, and David Phillips.

Box 57: Mexico City Station file, 1959-68; correspondence concerning HSCA visit to Mexico; HSCA receipts, testimony, etc.; 1975 report on unidentified man at Cuban embassy; HSCA request for JMWAVE traffic.

Box 58: IG report on Church Committee final report, book V; annex to task force report (AMLASH); DDCI testimony before committee (Dec. 1978); HSCA final report (summary) and correspondence; internal DO memos re Warren Commission (what to tell it re Cuban operations?); correspondence/memos re HSCA interviews and depositions from Win Scott, Golitzyn, Shevchenko, McCone, Nosenko (for most part, interviews and depositions themselves not here).

Box 59: HSCA press releases and correspondence.

Box 60: Nosenko material, including polygraph transcripts; misc. HSCA memos; James J. Angleton material, 1977-78.

Box 61: Copies of House Select Committee draft reports and CIA comments relating to Cuban exiles and their activities against Castro, Silvia Duran, AMLASH, and Oswald's activities in Mexico City.

Box 62: HSCA requests; photo surveillance around Cuban embassy in Mexico City; CIA/HSCA defector study; various interviews about JFK's death.

Box 63: Warren Commission reports on Oswald; a House report on Oswald's activities in New Orleans; CIA plots to assassinate Castro; and a folder on Ray Rocca's testimony before the Rockefeller Commission (his testimony is not present in the folder); and information relating to the disposition of CIA materials relating to the House investigation.

Box 64: Microfilm

History Staff reviewed Reels for which there were no description. These were Reels 46, 53-56, 59, 60-62, and 65-71. History Staff also sampled Reels 1, 14, 18, 22, 24, 26, 30, 31, and 44. Reels reviewed, as follows:

Reel 1: CIA Security files in alphabetical order, containing background investigation results, memos, passport applications.

Reel 14: CIA Security files, in alphabetical order.

Reel 18: True name dossier from Office of Security files; list of U.S. defectors to Soviet Bloc; material on WIROGUE and the Congo; Cuban exile operations to infiltrate men into Cuba.

Reel 22: AMMUG; LIEMPTY; LILYRIC; LINCHPIN; LIENVOY (Mexico City surveillance activities of the Cuban and Soviet embassies in Mexico City.

Reel 24: Photo surveillance of Cuban embassy in Mexico City, August & November 1963; photo surveillance of USSR embassy in Mexico City, July-December 1963; Garrison investigation articles and CIA correspondence.

Reel 26: Extensive file on Cuban exile groups in U.S. receiving CIA help; DRE, Liberation Army of Cuba.

Reel 30: Mexico City Station files; CIA personnel records; Mexico City message traffic relating to Silvia Duran; photos of individuals entering or leaving the Soviet embassy and the Cuban consulate in Mexico City; press accounts of Garrison trial of Clay Shaw.

Reel 31: Oswald diary; Warren Commission file numbers and inventory; index of Mexico City traffic; Mexico City chronology; 1975 CIA report on unidentified man; 1975 CIA report on Cuba-JFK connection; list of "soft files" at beginning of microfilm.

Reel 44: Warren Commission documents relating to Oswald; Ambassador Thomas Mann's meeting with the Commission staff in Mexico City in 1964; Helms affidavit, 1964; Jack Ruby; Marina Oswald; Clay Shaw; and Jim Garrison.

Reel 46: Nosenko files; Mexico City Station chronological file; and a list of all station despatches from 10/15/63 to 11/27/63 (20 despatches missing).

Reel 53: CIA Security/201 files in alphabetical order.

Reel 54: CIA Security/201 files;, maps of Cuba; reports on Mexican/Cuban activities.

Reel 55: CIA Security files.

Reel 56: CIA Security files.

Reel 59: CIA Personnel files (including fitness reports).

Reel 60: CIA Personnel files.

Reel 61: Nosenko interrogation: information relating to Golitsyn; Cuban exile groups and their anti-Castro activities; William Pawley's anti-Castro activities.

Reel 62: CIA Nosenko interrogation transcripts; Cuban Revolutionary Council progress reports, March-April 1963; list of Cuban consulate employees worldwide; FBI report on Cuban government in exile in NYC; monthly expenditures of Cuban Revolutionary Council (CRC).

Reel 65: Cuban exile organizations such as the Cuban Revolutionary Council (CRC), Cuban Democratic Revolutionary Front (CDRF), Judicatura Cuban Democratica, and the 30 November Movement.

Reel 66: AMBUD file on CRC, monthly reports, statement of expenses, proposed programs and projects, budget projections and accounting statements of the Council.

Reel 67: AMBUD (Col. Johnson) file; CRC budget and programs, documents relating to the coordination problems within and between Cuban exile groups.

Reel 68: Col. Johnson Working File; weekly summary reports; the underground in Cuba; CRC activities and position papers; translations of Council documents; biographic information on CRC leaders Dr. Miro Cardona and Tony Varona.

Reel 69: CRC and the Cuban exile community; meeting in San Jose and around Latin America--selection of delegates, expenses, and recruitment efforts.

Reel 70: CRC finances; Brigade 2506; Juan Bosch interview in Dominican Republic with Cuban exiles; and information relating to CRC delegates to various Latin American governments.

Reel 71: Cuban organizations; photos of Mexican embassy entrance.

Reel 72: Photos of Mexican embassy entrance.

Oswald 201 File

Box 1: mostly FBI interviews/investigation notes; items sent by FBI to CIA prior to JFK assassination regarding Oswald's activities in New Orleans; State Department correspondence regarding Oswald defection and return; Silvia Duran material; newspaper articles; Mexico City Station files; and other material.

Box 2: FBI background investigation of Oswald and his wife Marina's activities while in the Soviet Union.

Box 3: FBI background investigation of Oswald activities in New Orleans; FBI interviews of Marina Oswald; information relating to the Fair Play for Cuba Committee; State Department actions regarding Oswald's passport and visa applications; FBI tracing of weapons connected with Oswald; information on Jack Ruby; and a tape of the radio debate in which Oswald participated in August 1963.

Box 4: FBI reports on Oswald; FBI interviews with Oswald and Marina after the assassination; copy of Cuban government's protest to Mexican authorities over the arrest and treatment of Silvia Duran; and an index to the FBI reports is included in the box.

Box 5: FBI investigation of the assassination (3 vols.); a copy of Oswald's diary while he was in Moscow; biographic material on Marina Oswald; a copy of Oswald's chronology while in the Soviet Union; and a copy of the questions for the Soviet government composed by CIA officials.

Box 6: Oswald chronology; biography of Marina Oswald; Warren Commission correspondence; name traces of those who appear in Oswald diary; Warren Commission correspondence; Oswald Mexico trip; Oswald address book; Silvia Duran Mexican interrogation; newspaper clippings.

Box 7: FBI reports on Oswald; Nosenko interviews; photos of Oswald in Minsk; list of Oswald's apartment articles; and a name list of CIA traces for the Warren Commission.

Box 8: Photos shown to Marina Oswald for ID purposes; SR/CI Studies for the Warren Commission; continuing FBI investigation, Dallas area; interview with Marina; Oswald/Ruby alleged association; attachments to Oswald chronology in USSR.

Box 9: Copy of Marina Oswald's notebook with addresses; list of items prepared by CI on Oswald care for the Warren Commission;

Oswald's contacts in the Soviet Union; and an FBI report on Oswald's activities in Mexico; a CIA brief for presentation to the Warren Commission on Oswald; Soviet Government documents relating to Oswald; and a translation of a Portuguese book, A Conspiracao.

Box 10: FBI investigations; Nosenko material; anti-Castro activities in U.S.; CIA report of Oswald in Mexico City; CIA report on Oswald defection; CIA report of Oswald as Kennedy murderer; assorted FBI items.

Box 11: Bulky material, mostly SR/CI Studies for Warren Commission; FBI reports; Marina Oswald material; Oswald Cuban application; USSR radio and newspaper traffic; Silvia Duran interview; foreign press reaction to JFK assassination and Warren Commission report; photos of unidentified man in Mexico City; Bernard Fensterwald FOIA case; assorted CIA and FBI material.

Box 12: Warren Commission Log Book from National Archives; master list of Warren Commission correspondence and exhibits from National Archives; and copies of FBI reports on the assassination.

Box 13: HTLINGUAL intercepts (Russian language with some translations); SE soft file on Oswald; Nosenko information on other Soviet defectors.

Box 14: Copies of CIA documents still classified in the Warren Commission records held at the National Archives; Oswald's activities in the Soviet Union; information relating to Gilberto Alvarado "Source D", Silvia Duran, and Oswald in Mexico; transcripts of telephone intercepts from the Mexico City Station.

Box 15: CIA-Warren Commission released materials, 1964; background on Jack Ruby, Oswald; Oswald's Soviet medical record; National Archives list of status of CIA documents in Warren Commission records, 1967; Soviet press reaction to assassination; internal memoranda and other records of the Warren Commission; transcript of executive session of the Warren Commission; Oswald's Mexico trip, Soviet defection; Oswald's alleged CIA connections; Warren Commission material; "kook" cases; follow-up on numerous "leads"; Helms's file on Oswald and Warren Commission documents (as of January 1964).

Box 16: Garrison investigation, newspaper clippings, and other reports; Warren Commission memos.

Mexico City Station files (8 bulky files)

(Considered part of the Oswald 201 file; to be placed in box within Oswald's 201 file)

Mexico Station files on Oswald (P-files); Oswald chronology; newspaper clippings; FBI report on Oswald in Mexico city; misc. material on Oswald in Mexico; Garrison investigation material (mostly newspaper clippings); Warren Commission testimony.

HSCA Miscellaneous Folders (16 folders)

(These file folders, which are unaccessioned at present, will be placed within HSCA collection, Job No. 80-T01357A)

HSCA requests; information on Oswald in USSR; Marina Oswald; documents on Roselli and Giancana.

NOTES ON TRANSFER TO THE NATIONAL ARCHIVES AND DECLASSIFICATION OF CIA RECORDS

10 February 1992

1. Transfer CIA would transfer documents under their existing classification to the National Archives and Records Administration (NARA) in much the same way that it already transfers declassified documents. Using a NARA Form 258, the usual transfer document, CIA would note that the documents to be transferred are classfied. These records would then go into secure NARA vaults, where they would be accessible only to archivists with appropriate security clearances. Codeword documents would go into a compartmented vault under the direct control of the Records Declassification Division, to be processed only by reviewers with the necessary SCI access approvals.

2. Classification Any transfer of CIA records to NARA under existing classification would provide continuing security protection for these documents consistent with Agency standards. In accordance with statutory guidelines, NARA must ensure the confidentiality of investigatory sources and the proper protection of personal privacy as well as national security information, including intelligence sources and methods.

3. Declassification Declassification guidelines would be a matter for negotiation between the CIA and NARA. Some agencies (e.g. the Department of Defense) give general guidance, while others (e.g. the Department of State) offer more specific guidelines. Although specific guidelines require more effort to develop, NARA prefers them to more general guidelines, since under specific instructions NARA's reviewers find less need for referral back to the donor agency.

4. Funding and Resources Funding and resources would also be matter for negotiation between the Agency and NARA. The Department of State and the Agency for International Development (AID), for example, have funded a certain number of reviewer positions, while NARA funds all overseer positions (both reviewers and overseers are NARA employees). For consistency and quality control NARA does two reviews for State and AID. State's own staff members then do a final quality check--in effect a third review--of the product at NARA. State and AID consider their review guidelines to be draft guidance until they review the

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results. They then redraft the guidance, as necessary. In the past, this has meant only fine-tuning the guidelines, which are then applied to the next group of records, rather than a re-review of those already processed.

5. Preservation CIA's records from the House Select Committee on Assassinations investigation are in poor physical condition and have distinct preservation needs. The collection contains large quantities of fragile and deteriorating documents, including thermofax copies and photographs, which NARA is in a far better position to care for properly than is CIA.

14. CIA HISTORICAL REVIEW PROGRAM

SYNOPSIS. This regulation prescribes the responsibilities, guidelines, and procedures for the declassification review and release of permanent Agency records under the CIA Historical Review Program.

a. GENERAL

(1) The Agency's Historical Review Program (hereafter, the Program) is established to make significant historical information available to the public without damage to the national security interests of the United States. This includes systematic review for declassification and release of: all permanent records 30 years old or older (with the exception of designated operational files); other records on selected topics or events; certain National Intelligence Estimates; and CIA documents that the Department of State selects for inclusion in its Foreign Relations of the United States series.

(2) Reaffirming the principle that the US Government's records should be available to the public, this Program will declassify and release to the public the maximum volume of historical records consistent with:

(a) The responsibilities of the Director of Central Intelligence (DCI) under the National Security Act of 1947 and the CIA Act of 1949, as amended, to protect intelligence sources and methods and organizational and personnel information.

(b) The requirements of Executive Order 12356 and successor orders to protect national security information.

(c) Provisions of law that govern the public disclosure of information.

(3) The Agency will transfer records declassified and approved for release under this Program (including documents released for publication in the Department of State's Foreign Relations of the United States series) to the National Archives and Records Administration (hereafter, National Archives) for public use.

b. AUTHORITY. The Historical Review Program is established in accordance with:

(1) Executive Order 12356, which prescribes a uniform system for classifying, declassifying, and safeguarding national security information, and provides in § 3.3(c) that the DCI may establish special procedures for systematic review for declassification of classified information pertaining to intelligence activities (including special activities), or intelligence sources or methods.

(2) The responsibility of the DCI under § 102(d)(3) of the National Security Act, as amended, 50 U.S.C. § 403(d)(3), to protect intelligence sources and methods from unauthorized disclosure.

(3) Section 6 of the CIA Act of 1949, as amended, 50 U.S.C. § 403g, which exempts the Agency from the provisions of any law requiring the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed.

(4) The CIA Information Act of 1984, 50 U.S.C. § 431, which exempts certain operational files from the search and review provisions of the Freedom of Information Act.

(5) Section 198 of P.L. 102-138 (new Title IV of the State Department Basic Authorities Act of 1956, Sections 402 & 403), which require CIA to provide full and complete access to its records to Department of State historians compiling the Foreign Relations of the United States documentary series, and to review for declassification records selected for inclusion in that series.

c. RESPONSIBILITIES

(1) THE DIRECTOR, CENTER FOR THE STUDY OF INTELLIGENCE, has principal responsibility for the Historical Review Program. Custody, control, and declassification authority for records selected and received for review under the Program will be transferred from the components to the Director, Center for the Study of Intelligence, for all purposes. At the beginning of each calendar year the Director, Center for the Study of Intelligence, will submit a report to the DCI on the Program's work in the past year, and on its plans for the year ahead.

(2) In the Center for the Study of Intelligence the History Staff and the Historical Review Group are responsible for carrying out the Program.

(a) The History Staff will select groups of records for systematic declassification review, and locate and assemble for review records on events or topics of historical interest selected with the approval of the DCI. In accordance with Section 198 of P.L. 102-138, the History Staff will also coordinate with the Department of State's Office of the Historian to provide properly cleared and designated Department of State historians and members of its Advisory Committee on Historical Diplomatic Documentation with full and complete access to CIA records in selecting documents for possible inclusion in the Foreign Relations of the United States series. (Such CIA records must be pertinent to United States foreign policy and at least 26 years old when requested.)

(b) The Historical Review Group will be responsible for declassification review of records under the Program in accordance with this Regulation and additional guidance promulgated by the Director, Center for the Study of Intelligence, with the DCI's approval.

(c) In conducting this Program, the History Staff and Historical Review Group will advise the responsible components concerning the selection of records to be reviewed under the Program and will consult as necessary with the Agency Archivist and responsible directorate and DCI area Information Review Officers during the declassification review.

(d) To advise the Program on its policies and procedures the Director, Center for the Study of Intelligence, may from time to time convene the Historical Review Panel, which will include the Archivist of the United States, the Librarian of Congress, and representatives of the historical profession.

(3) The Agency Archivist will assist the Historical Review Group in maintaining the integrity of all permanent records (as determined by the Archivist of the United States) received or created by the Agency, and in

preparing appropriate documentation to provide data for an annual index of all Agency documents approved for release under this Program or through other means. The Agency Archivist will transfer records declassified and released under the Program to the National Archives.

(4) The History Advisory Board will advise the History Staff in its responsibilities for the Historical Review Program.

d. CRITERIA FOR REVIEW PRIORITY

(1) The History Staff, with the assistance of the Agency Archivist and the relevant Information Management Officers, will use archival data and listings that describe the Agency's permanent records as well as on-site research at the Agency Archives and Records Center to identify and locate specific groups of records for review under the Program.

(2) The History Staff will determine the order in which records are reviewed, using as primary criteria their historical value, public interest in the subject matter, and their potential yield of documents that can be released. The Program will give special attention to records originated by the DCI or his principal subordinates and other senior Agency officials, finished intelligence, and disseminated intelligence reports. Priority for review will also be given to file series requiring prompt reproduction or other conservation action to ensure preservation of the information contained in the records.

(3) The History Staff will evaluate records in light of the contribution their declassification and release can make to understanding the history of CIA and its role in US intelligence, foreign policy, and international developments.

(4) To determine historical value, the Chief, History Staff, will consider the recommendations of the Historical Review Panel, and of a wide range of government, academic, and private historians.

(5) The following records will be subject to systematic declassification review:

(a) All permanent records held by the Agency that are 30 years old or older when reviewed, with the

exception of certain operational files designated by the DCI under the provisions of the CIA Information Act of 1984. Included in this review will be files inherited from predecessor organizations and formerly designated files that have been removed from exempt status as a result of the periodic review required by the CIA Information Act of 1984.

(b) All issues of Studies in Intelligence.

(6) In addition to selecting 30-year old records for systematic declassification review, the History Staff will locate and collect for Historical Review Group declassification review National Intelligence Estimates on the former Soviet Union that are ten years old or older when reviewed, and records (including operational files excluded from systematic review) on selected events or topics of historical interest selected with the DCI's approval.

(7) The Historical Review Group will review for declassification and release CIA records selected by the Department of State for inclusion in its Foreign Relations of the United States series, in accordance with Section 198 of P.L. 102-138 (as interpreted by the President's signing statement of 28 October 1991). The declassification review of such records will be completed within 120 days of their submission by the Department of State.

e. GUIDELINES FOR DECLASSIFICATION

(1) Executive Order 12356 requires that information be classified only if its disclosure reasonably could be expected to cause damage to the national security, and that it shall be declassified or downgraded as soon as national security considerations permit. The Order further states that information that no longer requires protection in the interest of national security shall be declassifed and released unless withholding is otherwise authorized by applicable law.

(2) There shall be a presumption in favor of disclosure except as provided in subparagraph e(4). Reviewers conducting declassification review of information under this Program who advocate the continued classification of information will bear the burden of

identifying any damage its disclosure reasonably could be expected to cause to the national security. Information, including information classified solely on the basis of the "mosaic" effect, may remain classified only if the reviewer can identify such damage and a clear connection between disclosure and the projected damage. To show such damage with respect to information 30 years old or older, a reviewer must articulate how disclosure of the information is likely to affect, in a significant and adverse way, the US Government's current or future ability to carry out its authorized activities. Unless a showing of possible damage is made with reasonable specificity, the information will be declassified.

(3) Factors to be considered in determining whether damage to the national security reasonably could be expected to be caused by disclosure include the effect of the passage of time on the sensitivity of the information, any prior disclosures of the information, the link between disclosure and possible harm, and past experience with respect to disclosures of similar information.

(4) Under EO 12356 the unauthorized disclosure of foreign government information, the identity of a confidential foreign source, or intelligence sources or methods is presumed to cause damage to the national security. Such information shall not be automatically withheld under this Program, but must be reviewed for possible declassification even if it concerns matters normally withheld from public release, such as the fact of CIA presence in a specific country abroad; the fact that certain covert action operations were conducted; the existence of foreign government relationships; or CIA personnel or organizational information. Such information will be declassified if a reviewer concludes that disclosure could not reasonably be expected to damage the national security.

(5) In accordance with the third agency rule, the Historical Review Group will coordinate its review decisions as necessary with other US Government agencies before taking final declassification action and arranging to transfer records to the National Archives.

(6) A significant consideration in reviewing information for declassification under this Program will be the

extent to which the information is already available to the public. Classified information will not be declassified automatically as a result of any unofficial or inadvertent disclosure of identical or similar information. However, information that CIA has officially acknowledged (including inadvertent disclosures) will not be eligible for continued classification. There is a presumption that information that has appeared publicly, including information that the CIA Publications Review Board has approved for publication even if not confirmed officially, will not damage the national security unless the reviewer can show how official confirmation could reasonably be expected to cause additional damage to the national security.

(7) The Historical Review Group will determine whether the information under review warrants continued protection, even if declassified, pursuant to statutory or other requirements. Such information (e.g. privacy data and information protected by executive privilege) will be released, except when prohibited by law, unless there is a showing that US interests will be adversely affected by the disclosure.

(8) In no case will information be kept classified in order to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; or to prevent or delay the release of information that does not require protection in the interest of national security.

f. PROCEDURES

(1) Individual documents will be released in full, withheld in full, or released in part. When a document cannot be released in full, an effort to sanitize the document by deleting those portions that may not be declassified, or that may not be made public for other lawful reasons, will be undertaken. This procedure will be followed only when it will not slow the pace of the review unduly, will not obscure the record's essential significance, and will not distort the document's bibliographical identity, even if details of internal dissemination are excised. Documents that cannot be sanitized according to these criteria will be withheld in full.

(2) The Center for the Study of Intelligence will make the determinations of the Historical Review Group available to the deputy directors, heads of independent offices, or their designees, whose components originated or have a substantial interest in the records. The responsible official will have 30 working days from the date of receipt of such records in which to appeal in writing to the Director, Center for the Study of Intelligence, any decision to declassify and release information.

(3) If the appeal is denied, the responsible deputy director or head of independent office will have 10 working days from the receipt of the decision of the Director, Center for the Study of Intelligence, to appeal that decision in writing to the Director of Central Intelligence, whose decision will be final.

(4) The Historical Review Group will maintain a record of all final determinations.

(5) At the time of review, the Historical Review Group will identify Agency records that cannot be declassified. The Historical Review Group will again review such records for declassification at a date not more than 10 years later specified by the Director, Center for the Study of Intelligence. That date will be marked on the document.

(6) This Regulation is intended to provide direction and guidance for those engaged in declassification review of records under the CIA Historical Review Program. Nothing contained in this Regulation or in any procedures promulgated to implement this Regulation is intended to confer, and does not confer, any substantive or procedural right or privilege on any person or organization.

APPROVED:

Robert M. Gates
Director of Central Intelligence

4-28-92
Date

102D CONGRESS
2D SESSION

S. J. RES. 282

To provide for the expeditious disclosure of records relevant to the assassination of President John F. Kennedy.

IN THE SENATE OF THE UNITED STATES

MARCH 26, 1992

Mr. BOREN (for himself, Mr. MITCHELL, Mr. SPECTER, Mr. MURKOWSKI, Mr. BRADLEY, Mr. DECONCINI, Mr. GLENN, Mr. METZENBAUM, Mr. WOFFORD, and Mr. COHEN) introduced the following joint resolution; which was read twice and referred to the Committee on Governmental Affairs

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JOINT RESOLUTION

To provide for the expeditious disclosure of records relevant to the assassination of President John F. Kennedy.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Joint Resolution may be cited as the "Assassination Materials Disclosure Act of 1992".

SEC. 2. FINDINGS, DECLARATIONS, AND PURPOSE.

(a) FINDINGS AND DECLARATIONS.—The Congress finds and declares that—

(1) the legitimacy of any government in a free society depends on the consent of the people;

(2) the ability of a government in a free society to obtain the consent of the people is undermined to the degree that the people do not trust their government;

(3) the disclosure of records in the possession of the Government relevant to the assassination of President John F. Kennedy will contribute to the trust of the people in their government;

(4) the disclosure of records in the possession of the Government relevant to the assassination of President John F. Kennedy should proceed as expeditiously as practicable; and

(5) all records in the possession of the Government relevant to the assassination of President John F. Kennedy should be released to the public at the earliest opportunity, except where clear and convincing justification exists for postponing the disclosure of such records to a specified time or following a specified occurrence in the future.

(b) PURPOSE.—The purpose of this Joint Resolution is to secure the expeditious disclosure of records relevant to the assassination of President John F. Kennedy as soon as practicable consistent with the public interest.

SEC. 3. DEFINITIONS.

In this Joint Resolution:

(1) "Archivist" means the Archivist of the United States.

(2) "Assassination material" means a record that relates in any manner or degree to the assassination of President John F. Kennedy, that was created or obtained by the House Committee, the Senate Committee, the Warren Commission, or an Executive agency or any other entity within the Executive branch of the Government, and that is in the custody of the House of Representatives, the Senate, the National Archives, or any other Executive agency, but does not include (A) material to the extent that it pertains to personnel matters or other administrative affairs of a congressional committee, the Warren Commission, or any entity within the Executive branch of the Government; or (B) the autopsy materials donated by the Kennedy family to the National Archives pursuant to a deed of gift regulating access to those materials, which are addressed in subsection 10(b) of this Joint Resolution.

(3) "Committee" means the House Committee or Senate Committee.

(4) "Executive agency" means an Executive agency as defined in subsection 552(f) of title 5, United States Code.

(5) "House Committee" means the Select Committee on Assassinations of the House of Representatives and the Permanent Select Committee on Intelligence of the House of Representatives acting under this Joint Resolution with respect to assassination materials in the custody of the House of Representatives.

(6) "National Archives" means the National Archives and Records Administration.

(7) "Originating body" means the Executive agency, commission, or congressional committee that created the particular record or obtained the particular record from a source other than another entity of the Government, or the custodian of records of that agency, commission, or committee for purposes of this Joint Resolution. For purposes of this Joint Resolution, (A) the custodian of records of the Select Committee on Assassinations of the House of Representatives is the Permanent Select Committee on Intelligence of the House of Representatives; (B) the custodian of records of the Select Committee To Study Governmental Operations With Respect to In-

telligence of the Senate is the Select Committee on Intelligence of the Senate; and (C) the custodian of records of the Warren Commission is the Archivist of the United States.

(8) "Record" includes a book, paper, map, photograph, machine readable material, computerized, digitized, or electronic information, regardless of the medium on which it is stored, or other documentary material, regardless of its physical form or characteristics.

(9) "Review Board" means the Assassination Material Review Board established under section 5.

(10) "Senate Committee" means the Select Committee To Study Governmental Operations With Respect to Intelligence of the Senate and the Select Committee on Intelligence of the Senate acting under this Joint Resolution with respect to assassination materials in the custody of the Senate.

(11) "Warren Commission" means the President's Commission on the Assassination of President John F. Kennedy.

SEC. 4. PUBLIC DISCLOSURE OF MATERIALS BY CONGRESS AND THE EXECUTIVE BRANCH.

(a) IN GENERAL.—Except for assassination material or particular information in assassination material the dis-

closure of which is postponed under section 8, all assassination materials shall be transferred to the National Archives and made available for inspection and copying by the general public as soon as practicable.

(b) FEES FOR COPYING.—The Archivist shall charge fees for copying and grant waivers of such fees pursuant to the standards established by section 552 of title 5, United States Code.

(c) PRINTING AND DISSEMINATION OF ASSASSINATION MATERIALS.—(1) The Archivist may provide copies of assassination materials of broad public interest to the Government Printing Office, which shall print copies for sale to the public.

(2) Assassination materials printed by the Government Printing Office pursuant to this subsection shall be placed in libraries throughout the United States that are Government depositories in accordance with the provisions of chapter 19 of title 44, United States Code.

SEC. 5. ASSASSINATION MATERIALS REVIEW BOARD.

(a) ESTABLISHMENT.—There is established as an independent agency a board to be known as the Assassination Materials Review Board.

(b) APPOINTMENT.—(1) The division of the United States Court of Appeals for the District of Columbia Circuit established under section 49 of title 28, United States

Code, shall, within 90 calendar days of the date of enactment of this Joint Resolution, appoint, without regard to political affiliation, 5 distinguished and impartial private citizens, none of whom are presently employees of any branch of the Government and none of whom shall have had any previous involvement with any investigation or inquiry relating to the assassination of President John F. Kennedy, to serve as members of the Review Board.

(2) A vacancy on the Review Board shall be filled in the same manner as the original appointment was made under paragraph (1).

(3) The members of the Review Board shall be deemed to be inferior officers of the United States within the meaning of section 2 of article II of the Constitution.

(c) CHAIR.—The members of the Review Board shall elect 1 of its members as chair at its initial meeting.

(d) COMPENSATION OF MEMBERS.—(1) A member of the Review Board shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Review Board.

(2) A member of the Review Board shall be allowed reasonable travel expenses, including per diem in lieu of

subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from the member's home or regular place of business in the performance of services for the Review Board.

(e) STAFF.—(1) The Review Board may, without regard to the civil service laws and regulations, appoint and terminate an Executive Director and such other additional personnel as are necessary to enable the Review Board to perform its duties. The individual appointed Executive Director shall be a person of integrity and impartiality who is not a present employee of any branch of the Government and has had no previous involvement with any investigation or inquiry relating to the assassination of President John F. Kennedy.

(2) The Review Board may fix the compensation of the Executive Director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the Executive Director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of that title.

(3) At the request of the Executive Director, Executive agencies, including the National Archives and other

originating bodies within the Executive branch, shall detail to the Review Board such employees as may be necessary and appropriate to carry out the review required by this Joint Resolution. Any employee detailed to the Review Board for this purpose shall be detailed without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(4) The Review Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

(f) INAPPLICABILITY OF CERTAIN LAWS.—The following laws shall not apply to the Review Board:

(1) Subchapter II of chapter 5 of title 5, United States Code.

(2) Chapter 7 of title 5, United States Code.

(3) Section 3105 and 3344 of title 5, United States Code.

(g) DUTIES.—The Review Board shall, consider and render decisions on referrals by the Executive Director and appeals as provided in section 7 for a determination—

(1) whether a record constitutes assassination material subject to this Joint Resolution; and

(2) whether a record or particular information in a record qualifies for postponement of disclosure under this Joint Resolution.

(h) REMOVAL.—(1) A member of the Review Board may be removed from office, other than by impeachment and conviction, only by the action of the President or the Attorney General acting on behalf of the President, and only for inefficiency, neglect of duty, malfeasance in office, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the member's duties.

(2)(A) If a member of the Review Board is removed from office, the Attorney General shall promptly submit to the division of the court that appointed the members of the Review Board, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives a report specifying the facts found and the ultimate grounds for the removal.

(B) The division of the court, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives shall make available to the public a report submitted under subparagraph (A), except that the division of the court or either judiciary committee may, if necessary to protect the rights of a per-

son named in the report or to prevent undue interference with any pending prosecution, postpone or refrain from publishing any or all of the report.

(3)(A) A member of the Review Board removed from office may obtain judicial review of the removal in a civil action commenced in the United States District Court, for the District of Columbia.

(B) A member of the division of the court that appointed the members of the Review Board may not hear or determine a civil action or an appeal of a decision in a civil action brought under subparagraph (A).

(C) The member may be reinstated or granted other appropriate relief by order of the court.

(i) OVERSIGHT.—(1) The appropriate committee of the House of Representatives and the Select Committee on Intelligence of the Senate shall have continuing oversight jurisdiction with respect to the official conduct of the Review Board. to include access to any records held or created by the Review Board, and the Review Board shall have the duty to cooperate with the exercise of such oversight jurisdiction.

(2) The Review Board shall submit to the Congress such statements or reports on the activities of the Review Board as the Review Board considers to be appropriate

in addition to the notifications required by subsection 8(g).

(j) SUPPORT SERVICES.—The Administrator of the General Services Administration shall provide administrative services for the Review Board on a reimbursable basis. The Archivist shall provide support services for the Review Board to include, as necessary, office space, clerical support, and personnel support, on a reimbursable basis.

(k) INTERPRETIVE REGULATIONS.—The Review Board may issue interpretive regulations.

(l) TERMINATION.—(1) The Review Board and the terms of its members shall terminate within two years of the date upon which the Board is formally constituted pursuant to this Joint Resolution and begins operations. Provided that, if the Review Board has not completed its work pursuant to this Joint Resolution within such two-year period, it may, by majority vote, extend its term for an additional one-year period for such purpose. Any additional extension of the Review Board and the terms of its members shall be authorized by the Congress.

(2) At least 30 calendar days prior to the completion of its work, the Review Board shall provide written notice to the President and the Congress of its intention to terminate its operations at a specified date.

SEC. 6. GROUNDS FOR POSTPONEMENT OF DISCLOSURE.

Disclosure to the general public of assassination material or particular information in assassination material may be postponed if its release would—

(1) reveal—

(A) an intelligence agent;

(B) an intelligence source or method which is currently utilized, or reasonably expected to be utilized, by the United States Government; or

(C) any other matter currently relating to the military defense, intelligence operations or conduct of foreign relations of the United States;

and the threat to the military defense, intelligence operations or conduct of foreign relations of the United States posed by its disclosure is of such gravity that it outweighs any public interest in its disclosure.

(2) constitute an invasion of privacy of a living person, whether that person is identified in the material or not, and that invasion of privacy is so substantial that it outweighs any public interest in its disclosure;

(3) constitute a substantial and unjustified violation of an understanding of confidentiality between

a Government agent and a witness or a foreign government; or

(4) disclose a security or protective procedure currently utilized, or reasonably expected to be utilized, by the Secret Service or other Government agency responsible for protecting Government officials, and that disclosure is so harmful that it outweighs any public interest in its disclosure.

SEC. 7. REVIEW OF MATERIALS BY THE EXECUTIVE DIRECTOR.

(a) RELEASE OF ALL ASSASSINATION MATERIALS TO THE EXECUTIVE DIRECTOR.—Each Executive agency, including the National Archives, shall make available to the Executive Director all assassination materials, as defined in section 3, in its possession, including but not limited to, in the case of the National Archives, the records of the Warren Commission, the House Committee, and the Senate Committee. Where the agency is uncertain if a record is assassination material, it shall make that record available to the Executive Director. The Executive Director shall have the authority and responsibility, where circumstances warrant, to inquire of any Executive agency as to the existence of further records that may be assassination materials beyond those made available by that agency, to obtain access to such records, and to rec-

ommend that the Review Board subpoena such records in the event of denial of such access.

(b) EXECUTIVE DIRECTOR RESPONSIBILITY.—The Executive Director shall have responsibility for reviewing all records that are made available by Executive agencies, including the National Archives, pursuant to subsection 7(a).

(c) CONSULTATION BY EXECUTIVE DIRECTOR.—The Executive Director may consult with the originating body for advice and information in reaching a decision with respect to the disclosure or nondisclosure of assassination materials.

(d) PRESUMPTION FOR RELEASE.—In the absence of clear and convincing evidence that an assassination material or particular information within an assassination material falls within the exemptions established in section 6 of this Joint Resolution, the Executive Director shall direct that the assassination material or particular information be released pursuant to subsection 7(e)(1).

(e) EXECUTIVE DIRECTOR DECISION.—After review of each record, the Executive Director shall, as soon as practicable after the date of enactment of this Joint Resolution, either—

(1) notify the originating body or bodies that the record is assassination material that is appro-

priate for release in its entirety pursuant to the standards established in this Joint Resolution. In such event, the Executive Director shall transmit the record to the Archivist and the Archivist shall make the record available for inspection and appropriate copying by the public, unless within 30 calendar days of notification an originating body files a notice of appeal with the Review Board: *Provided,* That any record that, in the judgment of the Executive Director, arguably falls within subsection 6(2), shall automatically be referred to the Review Board pursuant to subsection 7(e)(2)(D); or

(2) refer the record to the Review Board, accompanied by a written determination, indicating one of the following:

(A) that, in the Executive Director's judgment, the record is not assassination material;

(B) that, in the Executive Director's judgment, the record is assassination material that qualifies for postponement of disclosure under Section 6 or contains particular information that qualifies for postponement of disclosure under Section 6;

(C) that full Review Board investigation and/or Review Board judgment appears appro-

priate for a determination as to whether the record or particular information in the record qualifies for postponement of disclosure under Sec. 6 and thus that this determination shall be vested in the Review Board rather than the Executive Director; or

(D) that, in the Executive Director's judgment, the record arguably falls within subsection 6(2) and thus that the determination as to whether the record qualifies for postponement of disclosure shall be vested in the Review Board rather than the Executive Director.

SEC. 8. **DETERMINATIONS BY THE REVIEW BOARD.**

(a) APPEALS AND REFERRALS.—The Review Board shall review and apply the standards for release set forth in this Joint Resolution to

(1) all records that are the subject of appeals pursuant to Sec. 7(e)(1); and

(2) all records referred to the Review Board by the Executive Director pursuant to Sec. 7(e)(2).

(b) PRESUMPTION FOR RELEASE.—In the absence of clear and convincing evidence that an assassination material or particular information within an assassination material falls within the exemptions established in section 6 of this Joint Resolution, the Board shall direct that the

assassination material or particular information be released pursuant to subsection 8(h).

(c) POWERS.—The Review Board shall have authority to hold hearings, administer oaths, and subpoena witnesses and documents, and its subpoenas may be enforced in any appropriate Federal court by the Department of Justice acting pursuant to a lawful request of the Review Board.

(d) ADDITIONAL MATERIALS.—The Review Board shall have the authority and responsibility, where circumstances warrant, to inquire of any Executive agency as to the existence of further records that may be assassination materials beyond those made available by that agency, to obtain access to such records, and to use its subpoena power in support of this authority.

(e) WITNESS IMMUNITY.—The Review Board shall be considered an agency of the United States for purposes of section 6001 of title 18, United States Code.

(f) REVIEW BOARD DETERMINATIONS.—After review of each record, the Review Board shall determine whether such record is assassination material, and, if so, whether such assassination material, or particular information in the assassination material, qualifies for postponement of disclosure pursuant to section 6. Any reasonably segregable particular information in an assassination mate-

rial shall be considered for release after deletion of information in that assassination material that qualifies for postponement of disclosure. Where an entire assassination material qualifies for postponement of disclosure pursuant to section 6, the Board may, after consultation with the originating body and if consistent with and to the extent consistent with section 6, create and prepare for release a summary of the assassination material in order to provide for the fullest disclosure feasible. Where particular information in an assassination material qualifies for postponement of disclosure pursuant to section 6, the Board may, after consultation with the originating body and if consistent with and to the extent consistent with section 6, create and prepare for release appropriate substitutions for that information in order to provide for the fullest disclosure feasible.

(g) DECISIONS TO POSTPONE.—Where the Board determines that a record is not assassination material, or that a record, or particular information in the record, qualifies for postponement of disclosure pursuant to section 6, the Board shall transmit to the originating body written notice of such determination, together with a copy of the record at issue, and, if the originating body is an Executive agency, a copy of such notice and of the record shall be transmitted to the appropriate committee of the

House of Representatives and the Select Committee on Intelligence of the Senate. Such notice shall contain a statement of the reason or reasons for the Board's decision. Any decision of the Board that a record is not assassination material, or that disclosure of a record or particular information in a record should be postponed pursuant to section 6, shall not be subject to judicial review.

(h) DECISIONS TO RELEASE.—

(1) NON-EXECUTIVE AGENCY MATERIAL.—In the case of record for which the originating body is the Warren Commission, the House Committee, or the Senate Committee, where the Review Board determines that a record is assassination material, and that a record, particular information in a record, a summary of a record, or a substitution for particular information in a record is appropriate for release pursuant to this Joint Resolution, the Review Board shall transmit the record, particular information, summary, or substitution to the Archivist, and the Archivist shall make such record, particular information, summary, or substitution available for inspection and copying by the public. The Review Board's decision to release shall not be subject to review by the President or any other entity of the Government and shall not be subject to judicial review.

(2) EXECUTIVE AGENCY MATERIAL.—In the case of records for which the originating body is an Executive agency, excluding the Warren Commission, where the Review Board determines that a record, particular information in a record, a summary of a record, or a substitution for particular information in a record is appropriate for release pursuant to this Joint Resolution, the Review Board shall transmit to the originating body written notice of its determination. In such event, the Review Board shall transmit the record, particular information, summary, or substitute to the Archivist, and the Archivist shall make such material available for inspection and appropriate copying by the public, unless, within 60 calendar days of the date on which the Board has notified the originating body, the President has certified to the Review Board and the Archivist that the material qualifies for postponement of disclosure pursuant to section 6, in which case release of the material shall be postponed, and this decision shall not be subject to judicial review. The President shall not delegate this authority to any other official or entity.

(i) PRESIDENTIAL NOTICE TO CONGRESSIONAL COMMITTEES.—Whenever the President makes a certification

pursuant to subsection 8(h)(2), the President shall submit to the appropriate committee of the House of Representatives and the Select Committee on Intelligence of the Senate a written statement setting forth the reason or reasons for superseding the Board's determination and a complete copy of the material at issue.

(j) BOARD NOTICE TO PUBLIC.—Every 60 calendar days, beginning 60 calendar days after the date on which the Review Board first postpones release of any assassination material pursuant to section 8(g), the Board shall make available for public inspection and copying a notice of all such postponements determined over the 60-day period, including a description of the size and nature of each assassination material concerned and the ground or grounds for postponement.

(k) PRESIDENTIAL NOTICE TO PUBLIC.—In any case in which a determination of the Board to release assassination material is superseded by the President pursuant to this subsection, the President shall within 10 calendar days publish in the Federal Register notice of such action, including a description of the size and nature of the assassination material concerned and the ground or grounds for postponement.

(l) IMMUNITY FROM SUIT.—No person shall have a cause of action against members, employees or detailees

of the Review Board arising out of any action or failure to act with regard to assassination material under this Joint Resolution.

(m) RULES OF THE HOUSE OF REPRESENTATIVES AND SENATE.—That portion of subsection 8(h)(1) that permits the Review Board to release materials for which the originating body is the House Committee or the Senate Committee without the concurrence or approval of any congressional body is enacted by the Congress—

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such is deemed a part of the rules of each House, respectively, and such procedures supersede other rules only to the extent that they are inconsistent with such other rules; and

(2) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

SEC. 9. MARKING AND REVIEW OF MATERIALS THE DISCLOSURE OF WHICH IS POSTPONED.

(a) MARKING.—With respect to each assassination material or particular information in assassination material the disclosure of which is postponed pursuant to sec-

tion 8, or for which only substitutions or summaries have been released to the public pursuant to subsection 8(h), the Review Board shall append to the material (1) all records of proceedings conducted pursuant to this Joint Resolution and relating to the material, and (2) a statement of the Review Board designating, based on a review of the proceedings and in conformity with the decisions reflected therein, a specified time at which or a specified occurrence following which the material may appropriately be reconsidered for release pursuant to the standards established in this Joint Resolution. The Review Board shall then transfer the material and appendices to the Archivist for placement in the Archives under seal.

(b) REVIEW.—The sealed assassination materials transferred by the Review Board pursuant to this section shall remain subject to the standards for release established by this Joint Resolution. It shall be the continuing duty of the Archivist to review the sealed assassination materials and the documents appended thereto pursuant to this section and to resubmit assassination materials to the Review Board, if it is still in existence, or to the originating body, if the Review Board has been abolished, whenever it appears to the Archivist that review may be appropriate.

SEC. 10. DISCLOSURE OF OTHER MATERIALS AND ADDITIONAL STUDY.

(a) MATERIALS UNDER SEAL OF COURT.—(1) The Review Board may request the Department of Justice to petition, or through its own counsel petition, any court in the United States or abroad to release any information relevant to the assassination of President John F. Kennedy that is held under seal of the court.

(2)(A) The Review Board may request the Attorney General to petition, or through its own counsel petition, any court in the United States to release any information relevant to the assassination of President John F. Kennedy that is held under the injunction of secrecy of a grand jury.

(B) A request for disclosure of assassination materials under this Joint Resolution shall be deemed to constitute a showing of particularized need under Rule 6 of the Federal Rules of Criminal Procedure.

(b) AUTOPSY MATERIALS.—The Review Board shall, pursuant to the terms of the applicable deed of gift, seek access to the autopsy photographs and x-rays donated to the National Archives by the Kennedy family under the deed of gift. The Review Board shall, as soon as practicable, submit to the appropriate committee of the House and the Select Committee on Intelligence of the Senate a report on the status of these materials and on access

to these materials by individuals consistent with the deed of gift.

(c) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) The Attorney General should assist the Review Board in good faith to unseal any records that the Review Board determines to be relevant and held under seal by a court or under the injunction of secrecy of a grand jury;

(2) The Secretary of State should contact the Government of the Republic of Russia and seek the disclosure of all records of the government of the former Soviet Union, including the records of the Komitet Gosudarstvennoy Bezopasnosti (KGB) and the Glavnoye Razvedyvatelnoye Upravleniye (GRU), relevant to the assassination of President Kennedy, and contact any other foreign government that may hold information relevant to the assassination of President Kennedy and seek disclosure of such information; and

(3) all Executive agencies should cooperate in full with the Review Board to seek the disclosure of all information relevant to the assassination of President John F. Kennedy consistent with the public interest.

SEC 11. RULES OF CONSTRUCTION

(a) PRECEDENCE OVER OTHER LAW.—(1) Where this Joint Resolution requires release of a record, it shall take precedence over any other law, judicial decision construing such law, or common law doctrine that would otherwise prohibit such release.

(b) FREEDOM OF INFORMATION ACT.—Nothing in this Joint Resolution shall be construed to eliminate or limit any right to file requests with any Executive agency other than the Review Board or seek judicial review of the decisions of such agencies pursuant to section 552 of title 5, United States Code.

(c) EXISTING AUTHORITY.—Nothing in this Joint Resolution revokes or limits the existing authority of the President, any Executive agency, the Senate, or the House of Representatives, or any other entity of the Government to release records in its possession.

SEC. 12. TERMINATION OF EFFECT OF JOINT RESOLUTION.

The provisions of this Joint Resolution which pertain to the appointment and operation of the Review Board shall cease to be effective when the Review Board and the terms of its members have terminated pursuant to subsection 5(l). The remaining provisions of this Joint Resolution shall continue in effect until such time as the Archivist certifies to the President and the Congress that all

assassination materials have been made available to the public in accordance with this Joint Resolution.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out this Joint Resolution, to remain available until expended.

(b) INTERIM FUNDING.—Until such time as funds are appropriated pursuant to subsection (a), the President may use such sums as are available for discretionary use to carry out this Joint Resolution.

SEC. 14. SEVERABILITY.

If any provision of this Joint Resolution or the application thereof to any person or circumstance is held invalid, the remainder of this Joint Resolution and the application of that provision to other persons not similarly situated or to other circumstances shall not be affected by the invalidation.

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